

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LANDMARK AMERICAN INSURANCE  
COMPANY,

Plaintiff,

v.

NURSELECT LLC;

Defendant.

Civil Action. No: 5:24-cv-01412

Hon. Gail A. Weilheimer, U.S.D.J.

**JOINT APPENDIX OF EVIDENCE**

## TABLE OF CONTENTS

	<b>Page</b>
Declaration of Joan M. Gilbride, in Support of Plaintiff's Motion for Summary, filed January 21, 2025.....	<b>MSJ_00000001</b>
Exhibit 1 to Gilbride Declaration - Second amended complaint styled <i>Landmark American Insurance Company v. Nurseselect LLC</i> Case No. 5:24-cv-01412, United States District Court for the Eastern District of Pennsylvania. (ECF No. 21) .....	<b>MSJ_00000005</b>
Exhibit 2 to Gilbride Declaration - Nurseselect LLC's Answer to the Complaint. (ECF No.17).....	<b>MSJ_00000173</b>
Exhibit 3 to Gilbride Declaration - Professional Liability Policy No. LHC801468 issued by Landmark to Nurseselect for the Policy Period March 1, 2023 to March 1, 2024.....	<b>MSJ_00000184</b>
Exhibit 4 to Gilbride Declaration - Joinder complaint styled <i>Brenda L. Kling, individually and as Administratrix of the Estate of Geraldine E. Wiggins, v. Rehabilitation Center at Brethren Village, LLC, Brethren Village, Brethren Village Realty, LLC, Lori Schoener, NHA, and John Does 1-4 v. NurSelect, LLC</i> , Case No. CI-22-04128, .....	<b>MSJ_00000259</b>
Exhibit 5 to Gilbride Declaration - Initial complaint, filed in the Court of Common Pleas of Lancaster County on July 11, 2022, captioned <i>Brenda L. Kling, Administratrix of the Estate of Geraldine E. Wiggins v. Brethren Village, LLC, Brethren Village, Brethren Village Realty, LLC, Lori Schoener, NHA, and John Does 1-4</i> , Case No. CI-22-04128.....	<b>MSJ_00000326</b>
Exhibit 6 to Gilbride Declaration - Transcript from the deposition of David Shelly, president of Nurseselect, dated November 20, 2024.....	<b>MSJ_00000368</b>
Exhibit 7 to Gilbride Declaration - Nurseselect's responses to Landmark's interrogatories and document requests in this action.....	<b>MSJ_00000576</b>
Exhibit 8 to Gilbride Declaration - Staffing Agreement between Nurseselect and Brethren Village.....	<b>MSJ_00000591</b>
Exhibit 9 to Gilbride Declaration - Denial letter, dated October 4, 2023, sent by KBR on behalf of Landmark to Nurseselect regarding the Underlying Action. ....	<b>MSJ_00000603</b>
Exhibit 10 to Gilbride Declaration - Reservation of rights letter, dated April 12, 2024, sent by KBR on behalf of Landmark to Nurseselect.....	<b>MSJ_00000611</b>
Exhibit 11 to Gilbride Declaration - Email from Linda Reidenbaugh at the firm Saxton & Stump to David Shelly, dated January 12, 2023.....	<b>MSJ_00000619</b>



Exhibit 12 to Gilbride Declaration - Attorney Letter.....	<b>MSJ_00000621</b>
Exhibit 13 to Gilbride Declaration - Email dated October 5, 2023 regarding the claim, sent by broker for Nurseselect to the undersigned and Zach Wilson at Landmark, with several others cc'd including David Shelly.....	<b>MSJ_00000624</b>
Exhibit 14 to Gilbride Declaration - email from Ayanna McDowell to Melissa Reilly, and emails between David Shelly and Kimberly Selemba (attorney at Saxton & Stump) regarding Ayanna McDowell.....	<b>MSJ_00000629</b>
Declaration of Zach Wilson, in Support of Plaintiff's Motion for Summary Judgment, filed January 21, 2025.....	<b>MSJ_00000633</b>
Exhibit 1 to Wilson Declaration –email correspondence between Zach Wilson and David Shelly dated September 13, 2023.....	<b>MSJ_00000635</b>

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LANDMARK AMERICAN INSURANCE  
COMPANY,

Plaintiff,

v.

NURSELECT LLC;

Defendant.

Civil Action. No: 5:24-cv-01412

Hon. Gail A. Weilheimer, U.S.D.J.

**Declaration of Joan M. Gilbride**

Joan M. Gilbride, an attorney duly admitted to practice before the Court *pro hac vice*, declares, pursuant to 28 U.S.C. Sec. §1746, as follows:

1. I am a partner with Kaufman Borgeest & Ryan LLP (“KBR”), attorneys for Landmark American Insurance Company (“Landmark”) and as such, I am familiar with the facts set forth in this Declaration.

2. I submit this Declaration in support of Landmark’s Motion for Summary Judgment.

3. Annexed hereto as Exhibit “1” is a true and correct copy of the second amended complaint styled *Landmark American Insurance Company v. Nurseselect LLC* Case No. 5:24-cv-01412, United States District Court for the Eastern District of Pennsylvania. (ECF No. 21).

4. Annexed hereto as Exhibit “2” is a true and correct copy of Nurseselect LLC’s (“Nurseselect” or “Defendant”) Answer to the Complaint. (ECF No. 17).

5. Annexed hereto as Exhibit “3” is a true and correct copy of the Professional Liability Policy No. LHC801468 issued by Landmark to Nurselect for the Policy Period from March 1, 2023 to March 1, 2024.

6. Annexed hereto as Exhibit “4” is a true and correct copy of the joinder complaint styled *Brenda L. Kling, individually and as Administratrix of the Estate of Geraldine E. Wiggins, v. Rehabilitation Center at Brethren Village, LLC, Brethren Village, Brethren Village Realty, LLC, Lori Schoener, NHA, and John Does 1-4 v. NurSelect, LLC*, Case No. CI-22-04128, filed in the Court of Common Pleas of Lancaster County, Pennsylvania and currently pending. The Joinder Complaint of Defendant, Brethren Village, against Additional Defendant, Nurselect LLC, will be referred to in these papers as “Joinder,” and was filed on June 13, 2023. Attached as “exhibit A” to the Joinder is the Fourth Amended Complaint captioned *Brenda L. Kling, Administratrix of the Estate of Geraldine E. Wiggins, v. Rehabilitation Center at Brethren Village, LLC, Brethren Village, Brethren Village Realty, LLC, Lori Schoener, NHA, and John Does 1-4*, filed on December 22, 2022. The entirety of the action will be referred to as the Underlying Action.

7. Annexed hereto as Exhibit “5” is a true and correct copy of the initial complaint, filed in the Court of Common Pleas of Lancaster County on July 11, 2022, captioned *Brenda L. Kling, Administratrix of the Estate of Geraldine E. Wiggins v. Brethren Village, LLC, Brethren Village, Brethren Village Realty, LLC, Lori Schoener, NHA, and John Does 1-4*, Case No. CI-22-04128.

8. Annexed hereto as Exhibit “6” is a true and correct copy of the transcript from the deposition of David Shelly, president of Nurselect, dated November 20, 2024 (Relevant transcript portions are highlighted).

9. Annexed hereto as Exhibit “7” is a true and correct copy of Defendant’s written responses to Landmark’s interrogatories and document requests in this action.

10. Annexed hereto as Exhibit “8” is a true and correct copy of the staffing agreement between Nurselect and Brethren Village.

11. Annexed hereto as Exhibit “9” is a true and correct copy of the denial letter, dated October 4, 2023, sent by KBR on behalf of Landmark to Nurselect regarding the Underlying Action.

12. Annexed hereto as Exhibit “10” is a true and correct copy of the reservation of rights letter, dated April 12, 2024, sent by KBR on behalf of Landmark to Nurselect, stating that a defense would be provided to Nurselect under a reservation of rights, and pending the result of the present Declaratory Judgment Action.

13. Annexed hereto as Exhibit “11” is a true and correct copy of the email from Linda Reidenbaugh at the firm Saxton & Stump to David Shelly, which contained as an attachment a letter dated January 12, 2023 addressed to David Shelly as President of Nurselect, from Attorney Kimberly Selemba at Saxton & Stump (“Attorney Letter”).

14. Annexed hereto as Exhibit “12” is a true and correct copy of the Attorney Letter.

15. Annexed hereto as Exhibit “13” is a true and correct copy of the email dated October 5, 2023 regarding the claim, sent by broker for Nurselect to the undersigned and Zach Wilson at Landmark, with several others cc’d including David Shelly.

16. Annexed hereto as Exhibit “14” is a true and correct copy of an email from Ayanna McDowell to Melissa Reilly dated May 12, 2021, and emails between David Shelly and Kimberly Selemba (attorney at Saxton & Stump) regarding Ayanna McDowell dated October 14, 2022.

17. Pursuant to 28 U.S.C. Sec. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
January 21, 2025



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Joan M. Gilbride

# EXHIBIT 1

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

LANDMARK AMERICAN INSURANCE  
COMPANY,

Plaintiff,

v.

NURSELECT LLC,

Defendant.

Civil Action No.: 5:24-CV-01412

**SECOND AMENDED COMPLAINT  
FOR  
DECLARATORY JUDGMENT**

Plaintiff, Landmark American Insurance Company (“Landmark”), by and through its attorneys Kaufman, Borgeest & Ryan, LLP, brings this Complaint against defendant, NurSelect LLC (“NurSelect”), and in support thereof states as follows:

**NATURE OF ACTION AND RELIEF SOUGHT**

1. This is an action seeking a declaratory judgment and declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.
2. Landmark seeks a judicial declaration that it is not obligated to defend or indemnify NurSelect under Professional Liability Insurance Policy issued to NurSelect, the named Insured, in connection with a joinder complaint submitted for coverage by NurSelect.

**PARTIES, JURISDICTION AND VENUE**

3. Plaintiff Landmark is a corporation duly incorporated in the State of New Hampshire, with its principal place of business in Atlanta, Georgia.

4. Upon information and belief, Defendant NurSelect is a corporation organized and existing under and by the laws of Pennsylvania, with its principal place of business located in Reading, Pennsylvania and/or Lancaster, Pennsylvania.

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §1332, §2201 and §2202 because: (i) there is an actual controversy between the parties; (ii) the amount in controversy exceeds \$75,000, exclusive of interest and costs; and (iii) the matter is between citizens of different states.

6. Venue is proper under 28 U.S.C. §1391 because a substantial part of the events or omissions giving rise to the claim occurred in this judicial district, and the Defendant resides and maintains its principal place of business in this judicial district.

### **THE UNDERLYING CLAIM**

7. This action involves a coverage dispute as to the extent of any obligation owed by Landmark to NurSelect in connection with a joinder complaint pending in Pennsylvania state court, captioned *Brenda L. King, individually and as Administratrix of the Estate of Geraldine E. Wiggins, v. Rehabilitation Center at Brethren Village, LLC, Brethren Village, Brethren Village Realty, LLC, Lori Schoener, NHA, and John Does 1-4 v. NurSelect, LLC*, Case No. CI-22-04128 (the “Underlying Action”). (See Complaint filed in Underlying Action annexed hereto as Exhibit “A”).

8. The Underlying Action alleges the following three causes of action: (1) negligence, indemnification and contribution; (2) vicarious liability, indemnification, and contribution; and (3) contractual indemnification. The Underlying Action alleges that NurSelect is liable for common law and contractual indemnification and/or contribution, vicariously liable to Ms. Wiggins’ estate, jointly and severally liable with Brethren Village, and liable over Brethren Village for claims



asserted by Ms. Wiggins' estate and for injuries and damages alleged in originating complaint. The Underlying Action also asserts that pursuant to the supplemental staffing agreement, NurSelect is contractually obligated to indemnify and hold harmless Brethren Village for any liabilities, damages, and expenses resulting from the claims asserted by Ms. Wiggins' Estate.<sup>1</sup>

9. Prior to the filing of the Underlying Action, NurSelect received an attorney letter from counsel to Brethren Village Retirement Community on January 12, 2023 (the "Attorney Letter"). (See Attorney Letter annexed hereto as Exhibit "B"). The Attorney Letter was sent via email and mail with attention to NurSelect's President (David Shelly), and advises that Brethren Village has been sued in the Pennsylvania Court of Common Pleas related to the care and treatment of one of its residents, Geraldine Wiggins, for negligence arising out of a fall sustained by Ms. Wiggins on May 12, 2021, and that Brethren Village's investigation revealed that Ayanna McDowell, CNA, who was employed by NurSelect at the relevant time, had direct involvement in Ms. Wiggins' alleged fall. The Attorney Letter discusses the "Staffing Agreement" between Brethren Village and NurSelect, with specific reference to the agreement provision for "Apportionment of Liability and Damages Indemnification," which states:

5.1 Apportionment of Liability. It is hereby stipulated and agreed between the [Brethren Village] and NurSelect that with respect to any claim or action arising out of the Services, each entity shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements or judgments resulting from negligence, actions or omissions of its own agents, officers, and employees.

(See Exhibit A at 59; Exhibit B at 1-2).

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<sup>1</sup> The Underlying Action is a part of an action initiated on behalf of Ms. Wiggins Estate against a rehab facility, "Brethren Village", and in that originating action Ms. Wiggins' Estate alleges that that Ms. Wiggins died on August 28, 2021, and that Brethren Village acted negligently through its agents in the care and treatment of Ms. Wiggins beginning on April 13, 2021. Ms. Wiggins Estate further alleges that on May 12, 2021, Ms. Wiggins was left alone despite the plan of care requiring assistance and records, and obtained a head injury when she fell, which allegedly led to her death.

10. The Attorney Letter provides that based upon the Apportionment of Liability provision of the staffing agreement, Brethren Village will be filing a joinder complaint against NurSelect to invoke NurSelect's contractual agreement to indemnify Brethren Village for the alleged negligence, actions, or omissions of Ms. McDowell related to the care and treatment of Ms. Wiggins. The Attorney Letter also advises NurSelect to provide notice of the pending joinder against NurSelect to its liability insurance provider so that counsel can be assigned to represent NurSelect's interests. (Exhibit B at 2).

### **THE POLICY AND COVERAGE CORRESPONDENCE**

11. Landmark issued its Professional Liability Policy No. LHC801468 to NurSelect LLC for the Policy Period from March 1, 2023 to March 1, 2024. (See Landmark Policy annexed hereto as Exhibit "C").

12. The Policy's Medical Professional Liability Insuring Agreement provides as follows:

#### **Part I. INSURING AGREEMENT**

##### **A. Covered Services**

The Company will pay on behalf of the Insured, as shown in the Declarations, all sums that the Insured becomes legally obligated to pay as **Damages** and associated **Claim Expenses** arising out of a negligent act, error or omission, even if the **Claim** asserted is groundless, false or fraudulent, in the rendering of or failure to render professional services as described in the Business Description on the Declarations, provided that the:

1. **Claim** is first made against the Insured during the **Policy Period**, and reported to the Company no later than sixty (60) days after the end of the **Policy Period**;
2. Negligent act, error or omission took place in a covered territory;

3. Negligent act, error or omission took place after the **Retroactive Date** as shown in the Declarations.

(Exhibit C at LAND000035).

13. Under the terms of the Policy “Claim” is defined under the Medical Professional Liability Coverage Part as a “written demand for monetary or non-monetary relief received by the Insured during the **Policy Period**, including the service of a suit, or the institution of an arbitration proceeding.” (Exhibit C at LAND000039).

14. Part I.C. of the Medical Professional Liability Coverage Part of the Policy provides the following, in relevant part:

All Claims arising out of a single negligent act, error or omission, or a series of related negligent acts, errors or omissions by one or more Insureds shall be treated as a single Claim for all purposes of this policy. All Claims shall be deemed first made when the earliest of such Claims is first made, regardless of whether such date is before or during the Policy Period and all such Claims shall be subject to the same Each Claim Limit of Liability during that Policy Period.

(Exhibit C at LAND000036).

15. Part II.H. of the Policy provides:

This policy does not apply to any **Claim** or **Claim Expenses**<sup>2</sup> based upon or arising out of:

**H.** Any obligation or liability assumed by the Insured under any contract or any oral or written agreement, unless liability would have attached in the absence of such a contract or agreement, including the Insured’s decision to unilaterally terminate or otherwise alter, remove or abridge any rights, benefits or obligations under any contract or agreement.

(Exhibit C at LAND000038).

16. The Policy’s Professional Liability Coverage Part also includes a Notice of Claim general condition that provides:

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<sup>2</sup> “Claim Expenses” is defined to include attorney fees incurred by the Company or the Insured. (Exhibit C at LAND000040).

The Insured must notify the Company as soon as practicable of an incident, occurrence or offense that may reasonably be expected to result in a **Claim**. Where notice to the Company of such incidents, occurrences or offenses has been acknowledged as adequate by the Company in writing, subsequent **Claims** derived from such incidents, occurrences or offenses will be deemed as first made at the time the incident, occurrence or offense giving rise to such **Claim** was first provided. The Insured also must immediately send copies to the Company of any demands, notices, summonses or legal papers received in connection with any **Claim**, and must authorize the Company to obtain records and other information.

(Exhibit C at LAND000040-41).

17. The Underlying Action was reported to Landmark on September 12, 2023.

18. The Attorney Letter was not reported to Landmark until September 12, 2023, with the Underlying Action.

19. Upon inquiry by Landmark of why the Attorney Letter was not submitted earlier, NurSelect's president acknowledged the Attorney Letter was received via email, and that he did not open the email – without providing any excuse as to why. (See Email Correspondence between NurSelect and Landmark annexed hereto as Exhibit “D”).

20. On October 4, 2023, Landmark issued a coverage denial letter, advising NurSelect that the Underlying Action directly arises out of the Attorney Letter and constitutes a single Claim first made prior to the Policy Period, and thus, fails to trigger the applicable Insuring Agreement. Landmark also denied coverage for the Underlying Action based on the Policy's contract exclusion and the Policy's Notice of Claim condition. (See Landmark October 4, 2023 Coverage Letter annexed hereto as Exhibit “E”).<sup>3</sup>

21. Landmark also issued two other letters in response to NurSelect's contest of Landmark's coverage determination, on October 17, 2023 and February 16, 2024.

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<sup>3</sup> Landmark also denied coverage under the Policy's Commercial General Liability Coverage Part, which does not appear to be in dispute.

### **COUNT I – DECLARATORY JUDGMENT**

(Declaration that Landmark does not have a duty to defend or indemnify NurSelect for the Underlying Action – Failure to Satisfy the Insuring Agreement)

22. Landmark restates and incorporates all of the allegations set forth in the paragraphs of the Complaint numbered as “1” through “21” as though set forth more fully herein at length herein.

23. The Policy’s Professional Liability Insuring Agreement specifically requires that a “Claim” be “first made against the Insured **during** the Policy Period.” (Exhibit C at LAND000035, emphasis added).

24. The Policy defines “Claim” to include a “written demand for monetary or non-monetary relief received by the Insured during the Policy Period.” (Exhibit C at LAND000039).

25. The Attorney Letter constitutes a Claim under the Policy because the Attorney Letter states that Brethren Village intends to name NurSelect in a lawsuit, are seeking contractual indemnity (relief) and requests NurSelect notify its insurance carrier.

26. On January 12, 2023, NurSelect indisputably received the Attorney Letter – a “Claim” – by email, which was 48 days prior to the inception of the Landmark Policy Period.

27. The Underlying Action directly arises out of the Attorney Letter and thus, constitute a single Claim made prior to the Policy Period.

28. Landmark respectfully requests that the Court determine and declare that Landmark has neither a duty to defend nor a duty to indemnify NurSelect in connection with the Underlying Action since the Policy does not provide coverage for the Underlying Action because it is a Claim first made prior to the inception of the Policy and thus, fails to trigger the applicable Insuring Agreement under the Policy.

## **COUNT II – DECLARATORY JUDGMENT**

(Declaration that Landmark does not have a duty to defend or indemnify NurSelect for the Underlying Action – Contract Exclusion)

29. Landmark restates and incorporates all of the allegations set forth in the paragraphs of the Complaint numbered as “1” through “28” as though set forth more fully herein at length herein.

30. The Policy specifically excludes coverage for any “Claim” or “Claim Expenses” based upon or arising out of: “[a]ny obligation or liability assumed by the Insured under any contract or any oral or written agreement, unless liability would have attached in the absence of such a contract or agreement.” (Exhibit C at LAND000038).

31. The Attorney Letter advised NurSelect that based upon the “Apportionment of Liability” provision of the staffing agreement entered into between NurSelect and Brethren Village, Brethren Village would be filing a joinder complaint against NurSelect to invoke NurSelect’s contractual agreement to indemnify Brethren Village.

32. The Underlying Action would not have been filed but for the staffing agreement between the parties, and thus, any liability would not have attached to NurSelect in the absence of the contract.

33. The Underlying Action asserts that pursuant to the staffing agreement, NurSelect is contractually obligated to indemnify and hold harmless Brethren Village for any liabilities, damages, and expenses resulting from the claims asserted by Ms. Wiggin’s Estate.

34. The Policy’s contract exclusion (Part II.H.) wholly excludes coverage for the Underlying Action (which is inclusive of the Attorney Letter) because the exclusion precludes coverage for the entire Claim, as well as Claim Expenses.

35. Landmark respectfully requests that the Court determine and declare that Landmark has neither a duty to defend nor a duty to indemnify NurSelect in connection with the Underlying Action because the Policy's contract exclusion wholly excludes coverage for the Underlying Action.

### **COUNT III – DECLARATORY JUDGMENT**

(Declaration that Landmark does not have a duty to defend or indemnify NurSelect for the Underlying Action – Notice of Claim Condition)

36. Landmark restates and incorporates all of the allegations set forth in the paragraphs of the Complaint numbered as "1" through "35" as though set forth more fully herein at length herein.

37. The Policy specifically requires as a condition precedent to coverage that the Insured notify Landmark "as soon as practicable" of an incident, occurrence or offense that may reasonably be expected to result in a Claim" and must immediately send copies to [Landmark] of any demands, notices, summonses or legal papers received in connection with any Claim." (Exhibit C at LAND000040-41).

38. NurSelect knew of the incident involving Ms. Wiggins as early as October 14, 2022, when Brethren Village's counsel requested Ayanna McDowell's contact information and requested Ms. McDowell's statement regarding the incident. (See Exhibit "D").

39. NurSelect received the Attorney Letter (a Claim as defined under the Policy) on January 12, 2023.

40. NurSelect failed to notify Landmark as soon as practicable of the incident (in October 2022), and failed to immediately send a copy of the January 12, 2023 Attorney letter to Landmark.

41. As such, NurSelect failed to fulfill a condition precedent to coverage under the Policy.

42. Landmark respectfully requests that the Court determine and declare that Landmark has neither a duty to defend nor a duty to indemnify NurSelect in connection with the Underlying Action because the NurSelect failed to fulfill a condition precedent to coverage under the Policy.

**WHEREFORE**, Plaintiff Landmark respectfully requests that the Court enter a judgment in its favor:

- (a) Adjudging and declaring that Landmark has no obligation to defend NurSelect in the Underlying Action;
- (b) Adjudging and declaring that Landmark has no obligation to indemnify NurSelect in the Underlying Action; and
- (c) Granting Landmark such and further relief as this Court may deem just and proper under the circumstances.

Dated: August 9, 2024

RESPECTFULLY SUBMITTED,

**KAUFMAN BORGEESE & RYAN LLP**

By:



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Diana-Marie Laventure  
Joan Gilbride (*pro hac vice*)  
Briana Semenza (*pro hac vice*)  
Sara Moriarty (*pro hac vice*)  
*Attorneys for Plaintiff*  
875 Third Avenue, 5<sup>th</sup> Floor  
New York, New York 10022  
T: (212) 980-9600  
F: (212) 980-9291  
dmlaventure@kbrlaw.com  
jgilbride@kbrlaw.com  
bsemenza@kbrlaw.com  
smoriarty@kbrlaw.com



# EXHIBIT A

**SAXTON & STUMP**

Collin T. Keyser, Esquire  
 Attorney I.D. No. 307505  
 Kimberly A. Selemba, Esquire  
 Attorney I.D. No. 93535  
 280 Granite Run Drive, Suite 300  
 Lancaster, PA 17601  
 Phone: (717) 556-1000  
[ctk@saxtonstump.com](mailto:ctk@saxtonstump.com)  
[kas@saxtonstump.com](mailto:kas@saxtonstump.com)

*Attorneys for Defendants, Rehabilitation Center  
 at Brethren Village, LLC, Brethren Village,  
 Brethren Village Realty, LLC, and Lori  
 Schoener, NHA*

ENTERED AND FILED  
 PROTHONOTARY'S OFFICE  
 No. CI-22-04128  
 LANCASTER, PA

\*\*\*Electronically Filed\*\*\*

Jun 13 2023 02:40PM

Ryan McMinn

BRENDA L. KLING, individually and as	:	IN THE COURT OF COMMON PLEAS
Administratrix of the Estate of	:	OF LANCASTER COUNTY,
GERALDINE E. WIGGINS,	:	PENNSYLVANIA
Plaintiff	:	
v.	:	
	:	NO: CI-22-04128
REHABILITATION CENTER AT	:	
BRETHREN VILLAGE, LLC,	:	MedMal
BRETHREN VILLAGE, BRETHREN	:	
VILLAGE REALTY, LLC, LORI	:	
SCHOENER, NHA, and JOHN DOES1-	:	
4	:	
Defendants,	:	
v.	:	
NURSELECT, LLC,	:	
Additional	:	
Defendant.	:	

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

No. CI-22-04128

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lancaster Bar Association  
Lawyer Referral Service  
Telephone: 717-393-0737



No. CI-22-04128

BRENDA L. KLING, individually and as : IN THE COURT OF COMMON PLEAS  
 Administratrix of the Estate of : OF LANCASTER COUNTY,  
 GERALDINE E. WIGGINS, : PENNSYLVANIA

Plaintiff

NO: CI-22-04128

v.

MedMal

REHABILITATION CENTER AT :  
 BRETHREN VILLAGE, LLC, :  
 BRETHREN VILLAGE, BRETHREN :  
 VILLAGE REALTY, LLC, LORI :  
 SCHOENER, NHA, and JOHN DOES1- :  
 4 :

Defendants,

v.

NURSELECT, LLC,

Additional :  
 Defendant. :

**JOINDER COMPLAINT OF DEFENDANT, BRETHREN VILLAGE, AGAINST  
ADDITIONAL DEFENDANT, NURSELECT, LLC**

Defendant, Brethren Village, ("Joining Defendant"), by and through counsel, Saxton & Stump, files this Third-Party Joinder Complaint against Additional Defendant, NurSelect, LLC ("Additional Defendant" or "NurSelect"), pursuant to Pennsylvania Rule of Civil Procedure 2252 and, in support thereof avers as follows:

1. Plaintiff, Brenda L. Kling, has filed a Complaint in this matter, asserting claims for negligence, vicarious liability, corporate negligence, survival, wrongful death, and breach of fiduciary duty, arising out of skilled nursing care provided to resident, Geraldine E. Wiggins ("Ms. Wiggins"), at Rehabilitation Center at Brethren Village, LLC ("Brethren Village"). A copy of Plaintiff's Fourth Amended Complaint is attached hereto, without adoption, as "Exhibit A."

No. CI-22-04128

2. In the Fourth Amended Complaint, Plaintiff alleges that Defendants were negligent in relation to a fall that Ms. Wiggins had as she attempted to walk from the bathroom to her chair.

3. Joining Defendant hereby incorporates the allegations of Plaintiff's Fourth Amended Complaint without admitting or denying the substance of those allegations.

**JOINDER DEFENDANT**

4. Additional Defendant NurSelect, LLC, is a health care employment agency with a principal place of business at 630 Freedom Business Center Drive, King of Prussia, PA, 19406.

5. At the time of the alleged incident, NurSelect provided supplemental staffing to Brethren Village, pursuant to a September 22, 2020 written contract titled "Supplemental Staffing Agreement". A copy of the Supplemental Staffing Agreement is attached hereto as "Exhibit B."

**FACTUAL BACKGROUND**

6. As set forth above, Joining Defendant incorporates by reference the allegations in Plaintiff's Fourth Amended Complaint, without admitting or denying the substance of those allegations.

7. Plaintiff claims that, on or about the morning of May 12, 2021, Ms. Wiggins fell while walking from her bathroom to her chair unattended, resulting in a laceration and a quarter-sized hematoma.

8. On August 28, 2021, Ms. Wiggins passed away; Plaintiff alleges that "failure to thrive" was listed as the cause of death. 4th Am. Compl. ¶ 61.

9. Plaintiff alleges that the injuries Ms. Wiggins suffered from her fall contributed to her death over 3-months later. 4th Am. Compl. ¶ 63.



No. CI-22-04128

10. Ms. Wiggins was in the care of Ayanna McDowell, CNA, at the time of her fall.

11. Ms. McDowell was employed as an agency nurse for NurSelect at the time of the incident. She was not employed by Brethren Village.

12. The obligations of Additional Defendant, NurSelect, LLC, under the aforementioned written Supplemental Staffing Agreement, include, but are not limited to, the timely provision of licensed and certified nursing personnel in accordance with federal, state, and local laws, rules ordinances and regulations and meeting the highest professional standards and principles. Exhibit B, at Arts. 1.1, 1.2.

13. The Agreement expressly provides that NurSelect personnel furnished to Brethren Village “shall not be considered employees or agents [Brethren Village] but instead shall be considered leased employees of NurSelect.” Exhibit B, at Art 3.1.

14. Pursuant to the Supplemental Staffing Agreement, NurSelect agreed to “indemnify and hold harmless [Brethren Village] from and against any and all claims, demands, actions, settlements, or judgments, including reasonable attorneys’ fees and litigation expenses, arising from. . . NurSelect Personnel’s provision of the Services where such claims, demands actions, settlements, or judgments arise from the negligence or willful misconduct of NurSelect Personnel.” Exhibit B, at Art. 5.2.

**COUNT I**  
**NEGLIGENCE, INDEMNIFICATION AND CONTRIBUTION**

15. The foregoing paragraphs are incorporated herein by reference as if set forth herein at length.

16. Without admitting the averments of Plaintiff’s Fourth Amended Complaint, Additional Defendant, NurSelect, LLC, is solely liable to Plaintiff, jointly and severally liable with Joining Defendant, liable over Joining Defendant, or liable to Joining Defendant for

No. CI-22-04128

indemnification and/or contribution, for the claims asserted by Plaintiff, Brenda L. Kling, and for the injuries and damages alleged in the 4<sup>th</sup> Amended Complaint.

**WHEREFORE**, Joining Defendant Brethren Village demands judgment in its favor and against Additional Defendant, NurSelect, LLC. In the alternative, Joining Defendant Brethren Village demands that Additional Defendant, NurSelect, LLC, be held solely liable to Plaintiff, jointly and severally liable with Joining Defendant, liable over Joining Defendant, or liable to Joining Defendant for common law and contractual indemnification and/or contribution.

**COUNT II**  
**VICARIOUS LIABILITY, INDEMNIFICATION, AND CONTRIBUTION**

17. The foregoing paragraphs are incorporated herein by reference as if set forth herein at length.

18. Without admitting the averments of Plaintiff's Fourth Amended Complaint, Additional Defendant, NurSelect, LLC, as the employer/principal of Ayanna McDowell, is vicariously liable to Plaintiff, jointly and severally liable with Joining Defendant, liable over Joining Defendant, or liable to Joining Defendant for indemnification and/or contribution, for the claims asserted by Plaintiff, Brenda L. Kling, and for the injuries and damages alleged in the 4<sup>th</sup> Amended Complaint.

**WHEREFORE**, Joining Defendant Brethren Village demands judgment in its favor and against Additional Defendant, NurSelect, LLC. In the alternative, Joining Defendant Brethren Village demands that Additional Defendant, NurSelect, LLC, be held vicariously liable to Plaintiff, jointly and severally liable with Joining Defendant, liable over Joining Defendant, or liable to Joining Defendant for indemnification and/or contribution.



No. CI-22-04128

**COUNT III**  
**CONTRACTUAL INDEMNIFICATION**

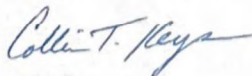
19. The foregoing paragraphs are incorporated herein by reference as if set forth herein at length.

20. Without admitting the averments of Plaintiff's Fourth Amended Complaint, Additional Defendant, NurSelect, LLC, pursuant to the Supplemental Staffing Agreement, is contractually obligated to indemnify and hold harmless Joining Defendant for any liabilities, damages, and expenses resulting from the claims asserted by Plaintiff.

**WHEREFORE**, Joining Defendant Brethren Village demands judgment in its favor and against Additional Defendant, NurSelect, LLC. In the alternative, Joining Defendant Brethren Village demands that Additional Defendant, NurSelect, LLC, be held contractually liable for indemnification for any liabilities, damages, and expenses resulting from the claims asserted by Plaintiff.

Respectfully submitted,

SAXTON & STUMP



Date: June 13, 2023

By: \_\_\_\_\_

Collin T. Keyser, Esquire  
Attorney I.D. No. 307505  
Kimberly A. Selemba, Esquire  
Attorney I.D. No. 93535  
280 Granite Run Drive, Suite 300  
Lancaster, PA 17601



No. CI-22-04128

Phone: (717) 556-1000

Fax: (717) 441-3810

[ctk@saxtonstump.com](mailto:ctk@saxtonstump.com)

[kas@saxtonstump.com](mailto:kas@saxtonstump.com)

*Attorneys for Defendants, Rehabilitation Center at  
Brethren Village, LLC, Brethren Village, Brethren  
Village Realty, LLC, and Lori Schoener, NHA*

**SAXTON & STUMP**

No. CI-22-04128

Collin T. Keyser, Esquire  
 Attorney I.D. No. 307505  
 Kimberly A. Selemba, Esquire  
 Attorney I.D. No. 93535  
 280 Granite Run Drive, Suite 300  
 Lancaster, PA 17601  
 Phone: (717) 556-1000  
[ctk@saxtonstump.com](mailto:ctk@saxtonstump.com)  
[kas@saxtonstump.com](mailto:kas@saxtonstump.com)

*Attorneys for Defendants, Rehabilitation Center  
 at Brethren Village, LLC, Brethren Village,  
 Brethren Village Realty, LLC, and Lori  
 Schoener, NHA*

BRENDA L. KLING, individually and as : IN THE COURT OF COMMON PLEAS  
 Administratrix of the Estate of : OF LANCASTER COUNTY,  
 GERALDINE E. WIGGINS, : PENNSYLVANIA

Plaintiff

: NO: CI-22-04128

v.

: MedMal

REHABILITATION CENTER AT :  
 BRETHREN VILLAGE, LLC, :  
 BRETHREN VILLAGE, BRETHREN :  
 VILLAGE REALTY, LLC, LORI :  
 SCHOENER, NHA, and JOHN DOES1- :  
 4 :

Defendants,

v.

NURSELECT, LLC,

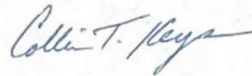
Additional  
 Defendant.

**CERTIFICATE OF SERVICE**

I, Collin T. Keyser, Esquire, certify that on this date, I served a certified true and correct copy of the foregoing Third-Party Joinder Complaint upon the following counsel and parties of record, via email and certified mail, addressed as follows:

No. CI-22-04128

Andrei Govorov, Esquire  
Rosenbaum & Associates, PC  
1818 Market Street, Suite 3200  
Philadelphia, PA 19103  
*(Attorney for Plaintiff)*  
*(via email)*



Date: June 13, 2023

By: \_\_\_\_\_  
Collin T. Keyser, Esquire



No. CI-22-04128

BRENDA L. KLING, individually and as : IN THE COURT OF COMMON PLEAS  
 Administratrix of the Estate of : OF LANCASTER COUNTY,  
 GERALDINE E. WIGGINS, : PENNSYLVANIA

Plaintiff

NO: CI-22-04128

v.

MedMal

REHABILITATION CENTER AT  
 BRETHREN VILLAGE, LLC,  
 BRETHREN VILLAGE, BRETHREN  
 VILLAGE REALTY, LLC, LORI  
 SCHOENER, NHA, and JOHN DOES1-  
 4

Defendants,

v.

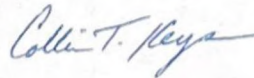
NURSELECT, LLC,

Additional  
 Defendant.

**PUBLIC ACCESS POLICY CERTIFICATION**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

SAXTON & STUMP



Date: June 13, 2023

By: \_\_\_\_\_  
 Collin T. Keyser, Esquire

## EXHIBIT A



ENTERED AND FILED  
PROTHONOTARY'S OFFICE  
LANCASTER, PA

\*\*\*Electronically Filed\*\*\*

Dec 22 2022 12:29PM

Ryan McMinn

ROSENBAUM & ASSOCIATES, P.C.  
BY: ANDREI GOVOROV, ESQUIRE  
Attorney ID No.: 209365  
1818 Market Street, Suite 3200  
Philadelphia, PA 19103  
(215) 569-0200  
[agovorov@rosenbaumfirm.com](mailto:agovorov@rosenbaumfirm.com)

MAJOR-JURY  
ASSESSMENT OF DAMAGES  
HEARING IS REQUIRED.  
JURY TRIAL DEMANDED

Attorney for Plaintiff

BRENDA L. KLING, ADMINISTRATRIX of the ESTATE OF GERALDINE E. WIGGINS deceased	:	LANCASTER COUNTY COURT OF COMMON PLEAS
	:	
	:	No.: CI-22-04128
vs.	:	
	:	FOURTH AMENDED COMPLAINT
REHABILITATION CENTER at BRETHREN VILLAGE, LLC; BRETHREN VILLAGE; BRETHREN VILLAGE REALTY, LLC; LORI SCHOENER, NHA; and JOHN DOES 1-4 (Fictitious Names)	:	

**CIVIL ACTION**  
**NOTICE**

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral & Information Service  
Lancaster County Bar Association  
28 E Orange Street  
Lancaster, PA 17602

**AVISO**

LE HAN DEMANDADO A USTED EN LA CORTE. SI USTED QUIERE DEFENDERSE DE ESTAS DEMANDAS EXPUESTAS EN LAS PAGINAS SIGUIENTES, USTED TIENE VIENTE (20) DIAS DE PLAZO AL PARTIR DE LA FECHA DE LA DEMANDA Y LA NOTIFICACION. HACE FALTA ASENTAR UNA COMPARENCIA ESCRITA O EN PERSONA O CON UN ABOGADO Y ENTREGAR A LA CORTE EN FORMA ESCRITA SUS DEFENSAS O SUS OBJECIONES A LAS DEMANDAS EN CONTRA DE SU PERSONA. SEA AVISADO QUE SI USTED NO SE DEFIENDE, LA CORTE TOMARA MEDIDAS Y PUEDE CONTINUAR LA DEMANDA EN CONTRA SUYA SIN PREVIO AVISO O NOTIFICACION. ADEMÁS, LA CORTE PUEDE DECIDIR A FAVOR DEL DEMANDANTE

Y REQUIERE QUE USTED CUMPLA CON TODAS LAS PROVISIONES DE ESTA DEMANDA. USTED PUEDE PERDER DINERO O SUS PROPIEDADES U OTROS DERECHOS IMPORTANTES PARA USTED. LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Servicio de referencia e información de abogados  
Colegio de Abogados del Condado de Lancaster  
28 E Calle Naranja  
Lancaster, Pensilvania 17602



ROSENBAUM & ASSOCIATES, P.C.  
 BY: ANDREI GOVOROV, ESQUIRE  
 Attorney ID No.: 209365  
 1818 Market Street, Suite 3200  
 Philadelphia, PA 19103  
 (215) 569-0200  
[agovorov@rosenbaumfirm.com](mailto:agovorov@rosenbaumfirm.com)

MAJOR-JURY  
 ASSESSMENT OF DAMAGES  
 HEARING IS REQUIRED.  
 JURY TRIAL DEMANDED

Attorney for Plaintiff

BRENDA L. KLING, ADMINISTRATRIX of the ESTATE OF GERALDINE E. WIGGINS: deceased	:	LANCASTER COUNTY COURT OF COMMON PLEAS
	:	No.: CI-22-04128
vs.	:	
	:	FOURTH AMENDED COMPLAINT
REHABILITATION CENTER at BRETHREN VILLAGE, LLC; BRETHREN VILLAGE; BRETHREN VILLAGE REALTY, LLC; LORI SCHOENER, NHA; and JOHN DOES 1-4 (Fictitious Names)	:	

#### **FOURTH AMENDED COMPLAINT**

(This Fourth Amended Complaint Includes a Medical Professional Liability Action)

Plaintiff, Brenda L. Kling, Administratrix of the Estate of Geraldine E. Wiggins, deceased, by and through their counsel, Rosenbaum & Associates, P.C., files this Fourth Amended Complaint in Civil Action, and aver as follows:

1. Plaintiff, Brenda L. Kling, Administratrix of the Estate of Geraldine E. Wiggins, deceased, is an adult individual and daughter of Decedent, Geraldine E. Wiggins, residing at 19 Verbena Drive, Lancaster, Pennsylvania 17062.

2. Decedent, Geraldine E. Wiggins, died intestate on August 28, 2021.

3. Plaintiff, Brenda L. Kling, were appointed Administratrix of the Estate of Geraldine E. Wiggins, deceased, by the Register of Wills of Lancaster County, on September 23, 2021, and in this capacity acts on behalf of the Estate, the beneficiaries of the Estate and the potential wrongful death beneficiaries.

4. At the time of her death, Decedent, Geraldine E. Wiggins, left surviving a daughter Brenda L. Kling, on whose behalf this claim is, in part, is filed.



5. Defendant, Rehabilitation Center Brethren Village, LLC, is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and was engaged in the business of owning, operating, managing and offering healthcare, medical services, rehabilitation and nursing care to the public at a rehabilitation and nursing home facility, Rehabilitation Center at Brethren Village, LLC, ("Brethren Village") 3001 Lititz Pike, Lancaster, Pennsylvania. Plaintiff is asserting a professional liability claim against this Defendant.

6. At all times material hereto, Defendant, Rehabilitation Center at Brethren Village, LLC, acted or failed to act by and through its agents, ostensible agents, servants, workmen, nurses, nurse's aides, and/or employees, physicians, the nursing home administrators and/or administrators responsible for formulating, adopting, monitoring and enforcing the policies, procedures and protocols of Brethren Village from the time Geraldine E. Wiggins was admitted to Brethren Village on April 13, 2021, including the physicians, nurses, nurses' aides, staff members and employees responsible for the care, supervision, treatment and safety of Geraldine E. Wiggins, starting on April 13, 2021, which includes those physicians, nurses, nurses' aides, staff and employees identified in the records and charts of Brethren Village, whose names cannot be discerned from the records but whose identities are known to and within the exclusive control of Defendants, as well as those physicians, nurses, nurses' aides, staff and employees whose names are not recorded in the records due to Defendants' failure to implement and utilize proper record-keeping and documentation procedures but whose identities are known to and within the exclusive control of Defendants, all of whom were then and there acting within the scope of their authority and in the course of their employment with Defendant, Rehabilitation Center at Brethren Village, LLC, and in furtherance of Defendant, Rehabilitation Center at Brethren Village, LLC's business and on behalf of Defendant, Rehabilitation Center at Brethren Village, LLC.

7. Defendant, Brethren Village, is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and was engaged in the business of owning, operating, managing and offering healthcare, medical services, rehabilitation and nursing care to the public at a rehabilitation and nursing home facility, Rehabilitation Center at Brethren Village, LLC, ("Brethren

Village”) 3001 Lititz Pike, Lancaster, Pennsylvania. Plaintiff is asserting a professional liability claim against this Defendant.

8. At all times material hereto, Defendant, Brethren Village, acted or failed to act by and through its agents, ostensible agents, servants, workmen, nurses, nurse’s aides, and/or employees, physicians, the nursing home administrators and/or administrators responsible for formulating, adopting, monitoring and enforcing the policies, procedures and protocols of Brethren Village from the time Geraldine E. Wiggins was admitted to Brethren Village on April 13, 2021, including the physicians, nurses, nurses’ aides, staff members and employees responsible for the care, supervision, treatment and safety of Geraldine E. Wiggins, starting on April 13, 2021, which includes those physicians, nurses, nurses’ aides, staff and employees identified in the records and charts of Brethren Village, whose names cannot be discerned from the records but whose identities are known to and within the exclusive control of Defendants, as well as those physicians, nurses, nurses’ aides, staff and employees whose names are not recorded in the records due to Defendants’ failure to implement and utilize proper record-keeping and documentation procedures but whose identities are known to and within the exclusive control of Defendants, all of whom were then and there acting within the scope of their authority and in the course of their employment with Defendant, Brethren Village, and in furtherance of Defendant, Brethren Village’s business and on behalf of Brethren Village.

9. Defendant, Brethren Village Realty, LLC, is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and was engaged in the business of owning, operating, managing and offering healthcare, medical services, rehabilitation and nursing care to the public at a rehabilitation and nursing home facility, Rehabilitation Center at Brethren Village, LLC, (“Brethren Village”) 3001 Lititz Pike, Lancaster, Pennsylvania. Plaintiff is asserting a professional liability claim against this Defendant.

10. At all times material hereto, Defendant, Brethren Village Realty, LLC, acted or failed to act by and through its agents, ostensible agents, servants, workmen, nurses, nurse’s aides, and/or employees, physicians, the nursing home administrators and/or administrators responsible for formulating, adopting,



monitoring and enforcing the policies, procedures and protocols of Brethren Village from the time Geraldine E. Wiggins was admitted to Brethren Village on April 13, 2021, including the physicians, nurses, nurses' aides, staff members and employees responsible for the care, supervision, treatment and safety of Geraldine E. Wiggins, starting on April 13, 2021, which includes those physicians, nurses, nurses' aides, staff and employees identified in the records and charts of Brethren Village, whose names cannot be discerned from the records but whose identities are known to and within the exclusive control of Defendants, as well as those physicians, nurses, nurses' aides, staff and employees whose names are not recorded in the records due to Defendants' failure to implement and utilize proper record-keeping and documentation procedures but whose identities are known to and within the exclusive control of Defendants, all of whom were then and there acting within the scope of their authority and in the course of their employment with Defendant, Brethren Village Realty, LLC, and in furtherance of Defendant, Brethren Village Realty, LLC's business and on behalf of Brethren Village Realty, LLC.

11. Defendant, Lori Schoener, is an individual residing herein at 123 Race Street, Richland, Pennsylvania 17087. Upon information and believe, at all relevant and material times herein, Lori Schoener was the licensed Nursing Home Administrator of Rehabilitation Center at Brethren Village, LLC during the residency of Geraldine E. Wiggins, and is therefore personally, jointly and vicariously liable, among other things, for the acts and omissions of herself and her agents, employees, servants, contractors, staff, and/or partners and all other Defendants, who played a role in the care provided to Geraldine E. Wiggins and in the operation of Brethren Village.

12. Defendants, Joe Does 1-4 (Fictitious Names) are individuals, corporations and/or other entities whose identities, after reasonable investigation, are currently unknown, but at all times relevant hereto owned, operated, controlled and/or managed Rehabilitation Center of Brethen Village, LLC and/or provided medical, nursing, rehabilitation and other health care services to Geraldine E. Wiggins during her admission to Rehabilitation Center of Brethren Village, LLC.

13. At all times material hereto, the Defendants individually and collectively owed duties to the residents of Brethren Village, including Geraldine E. Wiggins.

14. At all times relevant and material hereto the Defendants were aware of their obligations under the laws of the United States of America and of the Commonwealth of Pennsylvania with which Defendants were required to comply in providing care to Decedent including the United States Code, Pennsylvania Consolidated Statutes and the Pennsylvania Administrative Code.

15. The Defendants, directly and/or through their respective agents, servants and/or employees, accepted the responsibility for the care of Geraldine E. Wiggins, and in so doing, undertook and/or assumed a duty to Geraldine E. Wiggins to provide a safe nursing home facility necessary for the proper practice of medicine at said rehabilitation facility and to render reasonable, competent, proper, adequate and appropriate medical care, rehabilitation and nursing care, custodial care, rehabilitation services and treatment and, to take appropriate, preventative and curative measures as well as adequately supervise, monitor, and provide timely treatment and services to Geraldine E. Wiggins, and avoid and prevent harm to her.

16. The Defendants owed a duty to Geraldine E. Wiggins to exercise reasonable and ordinary care as a resident at Defendants' facility receiving medical, nursing, rehabilitation and other allied healthcare services. The Defendants' duties included, but were not limited to, establishing and enforcing their respective nursing home facility rules and regulations, medical staff practices, bylaws, policies, procedures, rules and regulations which mandate provision of proper medical, nursing and other healthcare provider services and/or care to the rehabilitation patients, including Geraldine E. Wiggins. The Defendants' duties also included hiring competent medical, nursing and other allied healthcare personnel, continuing and ongoing review of said competency, maintaining the facility such that it is free from ordinary hazards and defective equipment, maintaining sufficient staffing levels, insuring that all patients receive adequate, competent and timely medical, rehabilitation and other allied health care treatment and services while a patient at their rehabilitation facility, and, establishing and enforcing policies, procedures, protocols and systems to monitor their staff to ensure that all patients are receiving proper and timely care and treatment including, but not limited to, complete and accurate resident assessments, developing, enforcing and revising individualized, resident-centered care plans, adequate supervision/monitoring, proper use of



medication, proper use of physical and/or chemical restraints, proper establishment and enforcement of procedures for medical and nursing review and/or audit of the care given to patients, proper establishment of policies, procedures, protocols and guidelines to ensure that proper medical, rehabilitation, custodial and nursing care are performed on and for patients at their facility, including Geraldine E. Wiggins.

17. At all times relevant hereto, the Defendants, directly and/or through contractual agreement had a corporate responsibility through their respective bylaws, medical staff bylaws, rules, regulations and ongoing government functions to assure that only competent physicians, nurses and other health care providers engage in the medical, rehabilitation and nursing practice at this rehabilitation facility and other related fields of medicine on the Defendants' premises.

18. Defendants exercised complete and total control over the healthcare, skilled nursing and custodial care of all residents of their nursing facility, including Geraldine E. Wiggins.

19. At all times material hereto, Defendants were vertically integrated organizations / corporations that were controlled by their respective members, officers, managers, and/or board of directors who were responsible for the operation, planning, management and quality control of their Facility, Brethren Village.

20. At all times material hereto, the control exercised over the Facility by Defendants included, inter alia: budgeting, marketing, cash management, cost control, reimbursement, setting staffing levels, maintaining and increasing census, human resource management, training, supervision and oversight of their Facility's Administrator, supervision and oversight of their Facility's Director of Nursing, supervision of staff, obtaining licensure and certification, conducting mock surveys, conducting customer satisfaction surveys and monitoring customer satisfaction, corporate and regulatory compliance, quality of care assessment, and the creation and implementation of all policy and procedure manuals used by the Facility.

21. Defendants have failed to adequately train and/or supervise their physicians, nurses, nurses' aides and other healthcare providers which has resulted in personal harm and injury to Geraldine E. Wiggins.

22. The provisions of OBRA (Omnibus Budget Reconciliation Act of 1987) are applicable

with regard to Geraldine E. Wiggins' condition as it existed while in the Defendants' care and during her admission at the Defendants' facility beginning on April 13, 2021.

23. The Defendants held themselves out as a specialist in the field of rehabilitation care with the expertise necessary to maintain the health and safety of persons unable to care adequately for themselves.

24. At all times pertinent hereto, Geraldine E. Wiggins was a patient at Rehabilitation Center of Brethren Village, LLC and was under the exclusive care and control of the Defendants, their agents, officers, servants and/or employees.

25. The Defendants, their agents, officers, servants and/or employees failed, refused and/or neglected to perform the duties to provide reasonable and adequate health care to and for Geraldine E. Wiggins who was unable to attend to her own health, safety and well-being.

26. The Defendants, their agents, officers, servants and/or employees negligently, carelessly and recklessly provided care and treatment to Geraldine E. Wiggins, and all of the alleged acts, omissions and occurrences herein described or performed by the Defendants, their agents, officers, servants and/or employees fell within the course and scope of their agency and employment with the Defendants and in furtherance of the Defendants' business.

27. The Defendants provide twenty-four (24) hour a day, seven (7) day a week medical, nursing, custodial and rehabilitation care, services and assistance to its patients who have issues related to age, illness, disease, injury, convalescence and physical and mental infirmity.

28. The Defendants are responsible for nearly all the health care needs of their residents, including but not limited to, assistance with activities of daily living, bed mobility, transfer, ambulation, personal hygiene, nutrition, hydration, restorative care, incontinence care, turning and repositioning, supervision, monitoring, safety and rehabilitation.

29. The Defendants are responsible for ensuring that all doctor-ordered testing and medical services are performed.

30. The Defendants are required to conduct comprehensive and accurate assessment of their



patients' functional capacity, as well as their patients' needs and risk factors.

31. The Defendants are required to formulate and develop an individualized health "Care Plan" upon admission of each patient.

32. The Defendants are responsible for determining patients' risk level for injury including falls.

33. The Defendants are responsible for formulating, adopting, modifying and implementing injury prevention programs and care directives, including prevention programs for patients at risk for falls.

34. The Defendants are responsible for ensuring that injury prevention programs, procedures and protocols are implemented, executed and performed including prevention programs and procedures to prevent falls.

35. The Defendants are responsible for ensuring that a "Care Plan" is personalized for each patient and modified and/or revised as needs change.

36. The Defendants are responsible for ensuring that a "Care Plan" for patients includes safety measures and interventions to prevent falls.

37. The Defendants are responsible for ensuring that safety measures and interventions, including adequate pressure-relieving assistive devices, individualized turning and repositioning schedule, implementation of the appropriate infection control policies, procedures and techniques, hydration and nutrition protocols, adequate and timely incontinence care, hygiene services, adequate supervision and monitoring of patients with decreased mobility, safety awareness and cognition are implemented and executed.

38. Geraldine E. Wiggins, was admitted to Rehabilitation Center at Brethren Village, LLC on April 13, 2021 with diagnoses that included ambulatory dysfunction, generalized weakness and new onset A-Fib.

39. A "Fall Risk Assessment" was completed at time of admission and Geraldine E. Wiggins was considered at risk for falls related to a score of "26" (*a resident whose score is over 9 is at risk for falls*).

40. The "History of Present Illness" documented Geraldine E. Wiggins' reason for admission to Brethren Village as:

*Geraldine Wiggins is a 92 y.o. female admitted to nursing facility for ambulatory dysfunction having 2 falls at home prior to observation stay at LGH, for further PT/OT evaluation and treatment. Has had right knee pain since falls at home, XR in hospital negative for fracture. Today, states she feels a little hot and is tired, but otherwise she denies any pain, palpitation/flutter in chest, SOB, change in bowel or bladder.*

41. The staff at Brethren Village was aware of the patient's need for assistance with ambulation, activities of daily living and fall prevention as documented on the "Care Plan" for "Needs staff assistance for ADL's because of weakness" and "Has history of falls, potential for fall-related injury."

42. The following are some of the interventions the staff was to utilize to provide care and prevent falls for this patient:

*\* Be aware resident unable to independently bathe, dress, move self in bed, transfer, ambulate, toilet self, perform personal hygiene measures and feed self*

*Ambulate in hallway with rolling walker and one/two assist with gaitbelt*

*Encourage and assist resident as needed to bathroom upon rising, between meals and at bedtime*

*Observe for and report any decline in ADL performance; record appropriately in the EMR*

*One/Two assist for stand/pivot/weight bear between all support surfaces*

*Set up in bathroom at sink with supplies for grooming and bathing with assist as needed*

*My transfer status is stand and pivot Ax1 w/RW*

*Assist with ADL's, transfers and locomotion as needed, utilizing safety measures*

*Remind resident of the importance of asking for help before getting up or transferring, especially if he/she feels lightheaded or weak*

*When finding resident attempting to transfer independently, assess for basic needs, i.e., food, fluid, toileting, pain, boredom/anxiety*

43. Pursuant to medical records, Brethren Village increased their staff's workload related to Covid-19 precautions. But, despite the increase in staff workload, the staff of Brethren Village was well aware Geraldine E. Wiggins required one staff member and her assistive device to ambulate and transfer



safely.

44. The staff was also aware that the patient self-transferred but did not intervene or initiate additional interventions to prevent falls for this patient.

45. The April 24, 2021 "Statement Form" documented *"when I took care of Geraldine this morning caught her in the bathroom by herself she told me she took herself and at the time I didn't see a bruise."*

46. The patient's risk of falls was increased due to episodes of *"respiratory distress"* documented on the April 28, 2021 "MD Progress Notes" as *"Geraldine complained of shortness of breath this morning and was found to be hypoxic. Her SpO2 at the time was in the mid to high 80's and improved to the low 90s with supplemental oxygen."*

47. On May 3, 2021, "Physician's Orders" documented *"resident wheezing", "O2 sat 84%, lungs very diminished."*

48. A May 7, 2021 "MD Progress Note" revealed the patient's increased weakness during the morning hours as:

*Geraldine Wiggins is a 92 y.o. female seen and examined in her room on the rehabilitation unit, resting in her recliner chair. She reports she is feeling short of breath on exam. She admits to just waking up and ambulating which is when she often feels dyspnea.*

*She attests to being more tired in the mornings and feeling better as the day goes on.*

*Ambulatory Dysfunction: Geraldine reports therapy is going well, but that she does not feel ready to go home next week. PT reporting, she can ambulate up to 150 ft with four wheel walker and staff assistance, seems to have increased weakness and decreased functional status in the early morning. Will be discharged to personal care when appropriate, no discharge date set at this time. Continue PT/OT, continue to monitor.*

49. Geraldine E. Wiggins demonstrated a significant cognitive decline on May 9, 2021, documented in the "Progress Notes" as *"Res has been noted by staff to have been confused today. She had woken up several times unaware of where she was or what time of day it had been. Urine has fowl odor and is dark in color. Sip & Dip initiated."*

50. A May 10, 2021 "Progress Note" further documented *"Safety concerns: Yes. Safely*

*Concerns – note: Confusion and forgetfulness.”*

51. “Medication Administration Record” reveal a “Physician Order” dated May 10, 2021 for, “d/c functional abilities days 1-3 every day shift until 05/12/2021.” The MAR had the days of May 10, 11, and 12 highlighted to carry out the physician’s order.

52. Despite the fact the patient required staff assist for ambulation and activities of daily living, increased confusion, increased weakness and decreased functional ability in the morning hours and ordered to have her functional abilities discontinued on May 12, the staff of Brethren Village left Geraldine E. Wiggins alone at the bathroom sink on May 12, 2021 at 7:30AM.

53. The May 12, 2021 “Progress Note” documented the following:

*Patient on floor near at the foot of her recliner with walker in front of her and bed side table behind her. The back of her head was bleeding. We got her up off the floor and onto the chair. There was a quarter sized hematoma with small laceration to the base of the skull. Patient had been standing at the sink brushing her teeth when the CNA left her in the bathroom to take care of another patient who was having blood sugar issues. Patient then attempted to walk to the recliner to sit down and as she did she lost her balance falling backwards hitting her head on the base of the bedside table. First aid attempted with neuro and physical assessment. No other injuries noted. Pressure was applied to laceration for 15 minutes and continued to profusely bleed. MD called and order obtained to send to ER. Pressure applied for another 25 minutes until ambulance arrived to transport to LGH ER for evaluation at 0820 by MT ambulance. Denies pain. Neuro checks WNL. Daughter aware.*

54. Geraldine E. Wiggins was left alone despite the Plan of Care revealing the patient required staff assistance, despite the medical provider documenting “increased weakness and decreased functional status in the early morning,” despite her new onset of confusion, and the need for functional abilities to be temporarily discontinued.

55. The May 12, 2021 “Incident Report” documented Geraldine E. Wiggins’ “Predisposing Physiological Factors” as “*Gait Imbalance, Impaired Memory*” and her “Predisposing Situation Factor” as “*Ambulating without assist*”.

56. Geraldine E. Wiggins was transferred to Lancaster General Hospital on May 12, 2021. The Emergency Department Records reveals the following information:

- *Chief Complaint: Head Injury, Fall Evaluation*



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- Arrives via BLS amb from rehab center at Brethren Village after falling and striking head on corner of bedside nightstand.

With hematoma to posterior head.

ECF staff "couldn't get bleeding to stop" after holding pressure for 45 minutes.

EMS reports bleeding through ABD pad that was placed by them.

+ Plavix use.

Denies any abd, chest, back or neck pain.

HPI: patient is a 92-year-old female who presents after a fall. It was unwitnessed. She does have some mild confusion making history of present illness limited. The patient cannot tell me why she fell. She said, "I thought I can make it over to the chair."

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MDM: Patient presents with occipital hematoma with mild oozing. On my exam the patient was awake and alert but pleasantly confused. She did have an occipital hematoma with a small open wound. Figure-eight suture placed by physician's assistant. Bleeding subsided. Patient noted to have a C7 fracture. Cervical collar applied. She had no neck pain. Case discussed with the trauma service who recommended imaging of her chest abdomen pelvis. I also ordered basic bloodwork. Disposition is pending their evaluation. Patient remained comfortable in the ER.

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CT Angiogram Chest: Since the prior study, the patient has suffered mild superior endplate compression fractures at C7 and T1. A superior endplate compression fracture at T2 is stable. Multiple new compression fractures, most notable at the T7 level.

57. The May 12, 2021 "Neurosurgery Note" documented the "Impression/Plan" as "Acute fracture C7, T1 with no significant retropulsion", "Currently oriented to person only", "No surgical intervention needed" and "Aspen Cervical collar OK per Dr. Hernandez."

58. Geraldine E. Wiggins was readmitted to Brethren Village from Lancaster General Hospital.

59. On May 15, 201, Speech Therapy documented Geraldine E. Wiggins as "referred by physician for speech swallow evaluation. Patient exhibiting difficulty completing meals and rotary chew for regular diet intake. The functional deficits are caused by generalized weakness, decreased range of motion from C Collar placement."

60. The vertebral fracture and need for a cervical collar interfered with her meal consumption.

61. Geraldine E. Wiggins died on August 28, 2021 with failure to thrive listed at the cause of death.

62. Decedent suffered horrific injuries as a consequence of the negligence, neglect and abuse by Defendants, and/or Defendants' real and/or ostensible servants, agents and/or employees.

63. The negligence, neglect and abuse of Geraldine E. Wiggins by Defendants, and/or Defendants' agents and resulting injuries caused a significant decline in Decedent's clinical status and were significant contributing factors in causing Decedent's death.

64. The severity of the negligence, neglect and abuse inflicted upon Geraldine E. Wiggins by the Defendants' mismanagement, improper under-budgeting, understaffing of the facility and lack of training and/or supervision of the facility's employees, failure to provide adequate and appropriate health care, engaging in incomplete, inconsistent and fraudulent documentation, failure to develop and implement an appropriate care plan, failure to conduct accurate patient assessment, failure to ensure the highest level of physical, mental and psychosocial functioning was attained or maintained, failure to provide appropriate monitoring, supervision, care and services caused Decedent to experience, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

65. As a direct result of the Defendants' negligence, neglect, abuse, carelessness and recklessness herein described, Decedent was caused to suffer serious and permanent injuries as described herein, including a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.



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CONDUCT OF THE DEFENDANTS

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66. Plaintiff hereby incorporates by reference the prior paragraphs of this Fourth Amended Complaint, as if they have been more fully set forth herein.

67. During the course of her admission, Geraldine E. Wiggins was incapable of independently providing for all of her daily care and personal needs without reliable assistance.

68. At all relevant times, the Defendants, through their agents, servants, employees and/or representatives: (a) should have been and/or were aware of Geraldine E. Wiggins' needs and (b) represented that they could adequately care for her needs.

69. In exchange for money, Geraldine E. Wiggins was admitted to the Defendants' care at Brethren Village to obtain such care and protection.

70. The Defendants, upon information and belief, were controlled by a board of directors who were responsible for the operation, planning, management and quality control of Brethren Village.

71. At all relevant times, the Defendants, individually, and/or through their agents, servants and employees, assessed the needs of Geraldine E. Wiggins and promised that they would adequately care for her needs, akin to a hospital.

72. The Defendants were responsible for the operation, planning, management and quality control of their Facility.

73. The control exercised over the Defendants' Facility by the Defendants, included: budgeting, marketing, cash management, cost control, reimbursement, setting staffing levels, maintaining and increasing census, human resource management, training, supervision and oversight of their Facility's administrator, supervision and oversight of their Facility's director of nursing, supervision of staff, obtaining licensure and certification, conducting mock surveys, conducting customer satisfaction surveys and monitoring customer satisfaction, corporate and regulatory compliance, quality of care assessment, and the creation and implementation of all policy and procedure manuals used by their Facility.

74. The Defendants controlled reimbursement, quality care assessment and compliance, licensure, certification, and all financial, tax and accounting issues through control of the fiscal policies of

Brethren Village.

75. Upon information and belief, the corporate officers of Defendants utilized survey results and quality indicators to monitor the care being provided at their nursing homes, including Brethren Village.

76. Upon information and belief, the Defendants, including their owners, officers, directors, partners, members, managers and employees knew that Rehabilitation Center at Brethren Village, LLC has been cited by governmental units as follows:

1/23/2020: failed to assess a pressure ulcer for one of one resident's reviewed; and

8/12/2021: failed to comprehensively assess and administer medication to a wound; and timely administer wound treatment to a sacral wound for one of seven residents reviewed.

77. As a direct and proximate result of the Defendants' acts and omissions, and their breach of the duty of care, negligence, carelessness and recklessness, Decedent suffered: (a) severe permanent physical injuries resulting in pain, suffering, and disfigurement; (b) mental anguish, embarrassment, humiliation, degradation, emotional distress, and loss of personal dignity; (c) loss of capacity for enjoyment of life; (d) expense of otherwise unnecessary hospitalizations and medical care; and (e) death.

78. In causing the aforesaid injuries, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

79. The conduct of the Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

80. At all relevant times, the Defendants, individually, and/or through their agents, servants and employees, assessed the needs of Geraldine E. Wiggins, and promised that they would adequately care for her needs, akin to a hospital.

81. At all relevant times, the Defendants made a conscious decision to operate and/or manage their Facility so as to maximize profits at the expense of the care required to be provided to their residents, including Geraldine E. Wiggins.



82. In their efforts to maximize profits, the Defendants reduced staffing levels below the level necessary to provide adequate and timely care and services to their patients, including Geraldine E. Wiggins.

83. Upon information and belief, the Defendants caused staffing levels at their Facility to be set at a level such that the personnel on duty at any given time could not and did not reasonably and timely tend to the needs of their assigned patients, including Geraldine E. Wiggins.

84. Upon information and belief, the Defendants intentionally increased the number of sick and frail residents with greater health problems requiring more complex care.

85. The Defendants knew that the increase in the acuity care levels of the patient population would substantially increase the need for staff, services and supplies necessary for the patient population.

86. The Defendants failed to provide the resources necessary, including sufficient staff, services and supplies, to meet the needs of their patients, including Geraldine E. Wiggins.

87. The Defendants negligently, carelessly and recklessly caused the healthcare providers, nurses and nurses' aides who they placed and/or staffed at their Facility to be so unqualified and/or under-trained, that the personnel on duty at any given time could not and did not reasonably and timely tend to the needs of their assigned patients, including Geraldine E. Wiggins.

88. The aforementioned acts and omissions directly caused and/or increased the risk of the injuries and harm to Geraldine E. Wiggins and were known by the Defendants.

89. At all relevant times, the Facility was individually owned, and/or in concert owned, possessed, managed, controlled, operated and maintained under the exclusive control of the Defendants.

90. At all relevant times, the Defendants were operating individually or through their managers, members, partners, officers, agents, servants and employees who had actual, apparent and/or ostensible authority, and all of whom were acting within the course and scope of their employment and under the direct and exclusive control of the Defendants.

91. The aforementioned injuries, acts and omissions were caused solely and exclusively by reason of negligence, carelessness and recklessness of the Defendants, and their agents, servants and employees and were due in no part to any act or omission to act on the part of Geraldine E. Wiggins.

92. The Defendants exercised complete and total control over the total and complete healthcare of all the patients of their Facility, including Geraldine E. Wiggins, akin to a hospital.

**COUNT I – NEGLIGENCE**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**  
**v.**

**REHABILITATION CENTER AT BRETHREN VILLAGE, LLC, BRETHREN VILLAGE,  
BRETHREN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4**

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93. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint, as though same were fully set forth at length herein.

94. Upon accepting Geraldine E. Wiggins as a resident at their Facility, the Defendants, individually and jointly, assumed direct duties to provide her with adequate, timely and appropriate healthcare and other basic custodial services as set forth herein.

95. The Defendants had the ultimate responsibility to ensure that the rights, safety, welfare and well-being of their residents, including Geraldine E. Wiggins, were protected.

96. The Defendants owed a duty to provide adequate, timely and appropriate healthcare and related skilled nursing, custodial, restorative, therapy and rehabilitation care and services to their residents, including Geraldine E. Wiggins, such as reasonable caregivers would provide under similar circumstances.

97. The Defendants each owed duty to their patients, including Geraldine E. Wiggins, to hire, train, oversee and supervise their employees to ensure that their Facility was operated, and services were provided, to their residents in a safe and reasonable matter.

98. The Defendants each owed a duty and responsibility to furnish Geraldine E. Wiggins with appropriate, timely and competent medical, nursing and custodial care and services.

99. The Defendants each owed and failed to fulfill the following duties and responsibilities to Geraldine E. Wiggins:



- i) The duty to use reasonable care in the maintenance of safe and adequate facility;
- ii) The duty to select, hire, train and retain only competent staff;
- iii) The duty to oversee, monitor and supervise all persons who practice nursing and/or medical healthcare within their facility;
- iv) The duty to staff their facility with sufficient and adequately trained personnel to provide the care and services required by their facility's patients;
- v) The duty to maintain sufficient staffing, funding, supplies and resources for the facility to meet the needs of their facility's patients;
- vi) The duty to formulate, adopt, oversee, revise and enforce rules, policies, procedures and protocols to ensure quality of care for all their facility's patients;
- vii) The duty to take adequate, timely and appropriate measures to correct the known problems with quality of care, as well as the known problems with the delivery of medical, nursing and custodial care and services;
- viii) The duty to keep their facility's patients free and safe from abuse and neglect;
- ix) The duty to provide safe, decent and clean environment for their facility's patients; and
- x) The duty to warn their facility's patients, as well as their families and/or responsible parties, of the Defendants' inability to provide adequate, timely, appropriate and safe care and services when the Defendants were placed on notice, knew, or should have known, of the deficiencies in providing such care and services to and for their patients.

100. In addition to the direct acts and omissions of the Defendants, the Defendants also acted through their agents, servants, officers and employees, who were in turn acting within the course and scope of their employment, in furtherance of the Defendants' business and under the direct control and supervision of the Defendants.

101. All of the acts alleged to have been done or not to have been done by the Defendants were done or not done by said Defendants, their agents, ostensible agents, servants, workmen and/or employees, acting in the course and scope of their employment with and on behalf of said Defendants and failed or refused to act with reasonable care in the following manner:

- a. violating their duty to provide adequate resident care, including but not limited to diagnosis, evaluation, assessment, supervision, monitoring, medication and treatment monitoring, medication and treatment to and for Geraldine E. Wiggins;
- b. failure to provide adequate supervision and monitoring to Geraldine E. Wiggins to avoid accidents;

- c. failure to keep Geraldine E. Wiggins safe from falls;
- d. failure to identify and implement adequate interventions to keep Geraldine E. Wiggins safe;
- e. failure to develop a comprehensive care plan to address Geraldine E. Wiggins' fall risk;
- f. failure to monitor the effectiveness of interventions and modify Geraldine E. Wiggins' care plan when her condition required the same;
- g. violating their duty to develop and implement a comprehensive Care Plan to prevent a fall resulting in hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and death;
- h. violating their duty to develop and implement timely interventions to prevent a fall resulting in hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and death;
- i. failure to recognize that the Decedent was at risk for falls and provide appropriate and adequate supervision and monitoring to prevent a fall resulting in hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and death;
- j. failure to recognize the Decedent's fall-risk factors and prevent a fall resulting in hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and death;
- k. failure to properly assess and document the Decedent's change in condition;
- l. failure to provide for the Decedent's well-being and keep her safe from a fall resulting in hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and death;
- m. failure to provide for the Decedent's safety and well-being;
- n. failing to make the appropriate, thorough and timely assessment of Decedent's condition;
- o. failing to seek timely medical care when Decedent's condition required same;
- p. failing to properly train and supervise Defendants' actual or ostensible employees, servants, agents or other staff or healthcare providers to monitor Decedent and to provide for her safety, welfare and general well-being;
- q. failing to properly hire, train and supervise staff, employees and healthcare providers at Defendants' facility;
- r. failing to monitor the competency, adequacy and propriety of the treatment rendered by their agents, servants and employees who provided care and treatment to Decedent while a resident at Defendants' facility;



- s. failing to maintain Defendants' duty to formulate, adopt and enforce adequate policies, procedures and protocols to ensure that their facility's patients, including Decedent, are properly supervised, assessed, monitored and receive proper and timely medical, custodial and nursing care;
- t. failing to maintain Defendants' duty to formulate, adopt and enforce adequate policies, procedures and protocols to ensure that their facility's patients, including Decedent, are properly supervised, monitored and receive proper medical, custodial and nursing care to keep her free from pressure injuries;
- u. failing to maintain Defendants' duty to formulate, adopt and enforce adequate policies, procedures and protocols to ensure that their facility's patients, including Decedent, are properly supervised, monitored and receive proper medical, custodial and nursing care to keep her free from infections and sepsis;
- v. failing to maintain Defendants' duty to formulate, adopt and enforce adequate policies, procedures and protocols to ensure that their facility's residents, including Decedent, are properly supervised, monitored and receive proper medical, custodial and nursing care to keep him free from protein-calorie malnutrition;
- w. failing to administer the facility in a manner that enabled it to use its resource effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of the facility's residents, including Decedent;
- x. failing to ensure that the Defendants used the results of its assessments to develop, review and revise Decedent's "Care Plan";
- y. failing to ensure that Defendants' facility had sufficient nursing staff to provide nursing and custodial care and services to the residents in order to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident, including Decedent;
- z. failing to maintain compliance with the governmental rules and regulation to which Defendants' delivery of care is compared as part of the survey process conducted by the Pennsylvania Department of Health;
- aa. failing to provide adequate and sufficient staffing levels at Defendants' facility;
- bb. failing to properly select, retain and monitor the competency of the medical and nursing staff, their employees, agents, servants and other healthcare providers who treated Decedent and failing to ensure such persons provided care within the applicable standards of care;
- cc. failing to keep Decedent free from neglect and abuse;
- dd. failing to take appropriate steps to remedy continuing problems at the Defendants' facility that Defendants knew, or had reason to know, were occurring with Decedent's care, which included the need to increase the number of the facility's employees, hiring skilled and trained employees, adequately train and supervise the current employees, monitoring

conduct of the employees, and adopting new or changing the existing policies, procedures and protocols to ensure care provided was provided within the appropriate community standards;

- ee. making false, fraudulent, inadequate and inconsistent notes in Decedent's chart;
- ff. failing to obtain new or modified "Physicians' Orders" when changes in Decedent's condition were recognized by Defendants' agents;
- gg. failing to accurately, timely and consistently document Decedent's needs and the care and services provided to her in response to such needs;
- hh. violating Pennsylvania Statutes, Pennsylvania Administrative Regulations, as well as OBRA regulations;
- ii. grossly understaffing Defendants' facility;
- jj. failing to train the employees to recognize medical conditions/symptoms which required Decedent's transfer to the hospital;
- kk. failing to allocate adequate funds, resources and supplies and failure to implement a facility budget that provided for the necessary and sufficient funds, resources and staffing levels to enable and allow their facility to provide adequate, timely appropriate care and services to the facility's residents, including Decedent;
- ll. failure to recognize and investigate neglect and abuse occurring with the care and services provided and not provided to Decedent, and failure to report such neglect and abuse to the appropriate governmental agencies;
- m. All of the acts or failure to act constitute a deviation from the appropriate standards of care, negligence, carelessness and reckless indifference to the health, safety, welfare and well-being of Decedent;
- nn. Defendants' conduct caused harm to Decedent and increased the risk of harm to her; and
- oo. in committing the aforementioned acts and omissions, Defendants were acting negligently, carelessly and with reckless indifference to the safety, welfare and well-being of Decedent.

102. Upon information and belief, the Defendants, including their owners, members, managers, officers, directors and partners knew of and/or were made aware of the Pennsylvania Department of Health annual and complaint survey results and placed on notice of the status of Brethren Village.

103. At all times relevant to this lawsuit, the Defendants employed and directed physicians, nurses and other medical personnel who rendered care to Geraldine E. Wiggins.



104. At all times relevant to this lawsuit, the Defendants owed a duty to Geraldine E. Wiggins to provide competent and qualified physicians, surgeons, nurses, nurses' aides and other medical and quasi medical personnel to render proper care to her.

105. At all times relevant to this lawsuit, the Defendants owed Geraldine E. Wiggins a duty to operate their rehabilitation Facility in a careful and reasonable manner, under the circumstances, as would have been done by other rehabilitation facilities in and about the Pennsylvania area.

106. At all times relevant to this lawsuit, Defendants and their agents, staff and employees, owed Geraldine E. Wiggins the duty to possess and exercise that degree of skill and knowledge ordinarily possessed and exercised by similar rehabilitation, physicians and/or nurses in and about the Pennsylvania area.

107. At all times relevant hereto, Geraldine E. Wiggins' care was to be delivered and administered by medical staff, nursing staff and healthcare staff at the Defendants' rehabilitation Facility in a reasonably safe and prudent manner within the applicable standards of care for the community, as well as state and federal nursing home facility rules and regulations.

108. Geraldine E. Wiggins was a resident at Defendants' rehabilitation Facility and the Defendants negligently and carelessly and in wanton and willful disregard for her health, safety and general welfare, inflicted injury upon her in failing to timely provide appropriate and necessary medical, nursing, rehabilitation and custodial care, adequate monitoring and supervision.

109. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendants, as is more fully set forth herein, Geraldine E. Wiggins experienced, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

110. Geraldine E. Wiggins experienced severe and excruciating pain and suffering as the result of the aforesaid negligent, careless and reckless conduct of the Defendants, and Defendants' agents, and



their breach of the duty of care as set forth herein.

111. In causing the aforesaid injuries, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

112. Pennsylvania Code Chapter 28, Section 201 *et. seq.*, requires Defendants to comply with all federal, state and local regulations with regard to long-term care facilities.

113. The Defendants violated OBRA regulations, which establish the minimum standard of care to be followed by Defendants, including but not limited to the following:

- (a) 42 C.F.R. § 483.10 (a)(1) / § 483.10 the patient has a right to a dignified existence;
- (b) 42 C.F.R. § 483.12 / § 483.13 (b) & (c) the patient has the right to be free from abuse, neglect, misappropriation of patient property, and exploitation as defined in this subpart;
- (c) 42 C.F.R. § 483.12 (c)(1) / § 483.13(c)(2) the facility must ensure that all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of patient property, are reported immediately, but not later than 2 hours after the allegation is made, if the events that cause the allegation involve abuse or result in serious bodily injury, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury, to the Administratrices of the facility and other officials (including to the State Survey Agency and adult protective services where state law provides for jurisdiction in long-term care facilities) in accordance with State law through established procedures;
- (d) 42 C.F.R. § 483.20 (2)(ii) the facility must conduct an assessment after a significant change in patient's condition;
- (e) 42 C.F.R. § 483.21 (b)(b) / § 483.20(k) Comprehensive Care Plans, the facility must develop and implement a comprehensive person-centered care plan for each patient, consistent with the patient rights, that includes measurable objectives and timeframes to meet a patient's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment;
- (f) 42 C.F.R. § 483.24 / § 483.25 each patient must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, consistent with the patient's comprehensive assessment and plan of care;
- (g) 42 C.F.R. § 483.25 (b)(i) / (ii) / § 483.25 (c)(1)(2) Based on the comprehensive assessment of a resident, the facility must ensure that (i) A resident receives care, consistent with professional standards of practice, to prevent pressure ulcers and does not develop pressure ulcers unless the

individual's clinical condition demonstrates that they were unavoidable; and (ii) A resident with pressure ulcers receives necessary treatment and services, consistent with professional standards of practice, to promote healing, prevent infection and prevent new ulcers from developing.

- (h) 42 C.F.R. § 483.25 (d)(2) / § 483.25 (h)(2) each patient receives adequate supervision and assistance devices to prevent accidents;
- (i) 42 C.F.R. § 483.35 (a) / § 483.30(a)(1) the facility must provide services by sufficient number of each of the following types of personnel on a twenty-four (24) hour basis to provide nursing care to all patients in accordance with patient care plans; and
- (j) 42 C.F.R. § 483.70 (b) / § 483.75 (b) The facility must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.

114. Geraldine E. Wiggins fell within the class of persons the statutory rules, regulations and laws that were intended to protect by virtue of OBRA Regulations and the Pennsylvania Code 28 §§ 201, *et. seq.*, thus entitling Plaintiff to adopt such laws as the standard of care for measuring Defendants' conduct. Thus, Plaintiff asserts a claim for negligence *per se*, asserting that, as a matter of law, the conduct of the Defendants amounted to negligence and negligence *per se*.

115. At all relevant times pertinent hereto, there was in full force and effect 18 Pa.C.S.A. § 2713 "Neglect of Care Dependent Person", providing penal consequences for neglect of a care-dependent person for:

*Intentionally, knowingly or recklessly causes bodily injury or serious bodily injury by failing to provide treatment, care, goods or services necessary to preserve the health, safety or welfare of a care-dependent person for whom he is responsible to provide care.*

116. 18 Pa.C.S.A. § 2713 "Neglect of Care Dependent Person" expresses the fundamental public policy of the Commonwealth of Pennsylvania that older adults, like children, are not to be abused or neglected, particularly in health care facilities or by persons holding themselves out as trained professionals, and that if such neglect or abuse causes injury, either physical or mental, then such conduct is actionable.

117. At all relevant times pertinent thereto, Geraldine E. Wiggins was a care-dependent resident at Defendants' facility and as such, fell within the class of persons 18 Pa.C.S.A. § 2713 "Neglect of Care



Dependent Person” was intended to protect, and as such, entitling Plaintiff to adopt 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” as the standard of care for measuring the conduct of the Defendants.

118. Furthermore, 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” is directed to obviate the specific kind of harm which Geraldine E. Wiggins sustained, with its purpose, at least in part, to protect the interest of a group of individuals, i.e., *care-dependent persons*, including Geraldine E. Wiggins.

119. Defendants, in accepting the responsibility for providing for Geraldine E. Wiggins’ care, welfare and well-being, as mentioned herein, and were negligent *per se* as they violated 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” in that they failed to provide treatment, care, goods and services necessary to preserve the health, safety or welfare of Geraldine E. Wiggins, for whom they were responsible to provide care as specifically set forth in this Fourth Amended Complaint.

120. As a direct result of the Defendants’ aforementioned negligence *per se*, Geraldine E. Wiggins was caused to suffer serious injuries as aforesaid.

121. The conduct of the Defendants was intentional, outrageous and willful and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

122. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demands judgment in her favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT II – VICARIOUS LIABILITY**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

v.

**REHABILITATION CENTER AT BRETHERN VILLAGE, LLC, BRETHERN VILLAGE,**  
**BRETHERN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4**

123. Plaintiff incorporates by reference herein the allegations contained in the receding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

124. At all times relevant hereto, Defendants’ agents, servants, employees and others were acting in the scope of their employment as agents, servants or employees of Defendants’ Facility.

125. Defendants are vicariously liable for the acts, commissions or omissions, of their physicians, nurses, nurses' aides and other medical personnel and healthcare providers fully as though the aforementioned physicians, nurses, nurses' aides and other medical personnel and healthcare providers performed the acts or omissions themselves. In the alternative, the Defendants are responsible for the negligent acts or omissions of other physicians, nurses, nurses' aides and other healthcare providers who are agents, employees and/or servants of the Defendants.

126. At all times relevant to this lawsuit, the Defendants, employed and directed physicians, nurses, nurses' aides and other medical personnel who rendered care to Geraldine E. Wiggins.

127. At all times relevant to this lawsuit, Defendants owed a duty to Geraldine E. Wiggins to provide competent and qualified physicians, surgeons, nurses and other quasi-medical personnel to render care to her.

128. At all times relevant to this lawsuit, the Defendants owed to Geraldine E. Wiggins the duty to operate their Facility in a careful and reasonable manner, under the circumstances, as would have been done by other similar facilities in and about the Pennsylvania area.

129. At all times relevant to this lawsuit, the Defendants and their agents, owed Geraldine E. Wiggins the duty to possess and exercise that degree of skill and knowledge ordinarily possessed and exercised by similar facilities, physicians and/or nurses in and about the Pennsylvania area.

130. At all times relevant to this lawsuit, Geraldine E. Wiggins' care was to be delivered and administered by the agents, servants and/or employees of the Defendants at the Defendants' Facility in a reasonably safe and prudent manner within the applicable standards of care for the community Commonwealth of Pennsylvania and federal nursing home facility rules and regulations.

131. The Defendants breached their duties and were, therefore, negligent, careless and exhibited a reckless disregard to the health, safety, welfare and well-being of Geraldine E. Wiggins.

132. The aforesaid breaches of duties, negligence, carelessness and recklessness of the Defendants directly and proximately caused the aforesaid injuries to Geraldine E. Wiggins, including, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion



from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

133. In causing the aforesaid injuries, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

134. The conduct of the Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

135. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demands judgment in her favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT III - CORPORATE LIABILITY**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

v.

**REHABILITATION CENTER AT BRETHREN VILLAGE, LLC, BRETHREN VILLAGE  
REALTY, LLC and JOHN DOES 1-4**

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136. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

137. Defendants' agents, employees, and servants and others provided care and treatment to Geraldine E. Wiggins as agents, employees, servants, officers or directors of Defendants or apparent agents held out as such.

138. At all times relevant hereto, Defendants' agents, servants, employees and others were acting in the scope of their employment as agents, servants, or employees of said Defendants.

139. At all relevant times pertinent hereto, the corporate conduct of the Defendants was independent of the negligent conduct of the employees, and was outrageous, willful, and wanton, and exhibited a reckless indifference to the health, welfare and well-being of Decedent.

140. Defendants, as corporate entities, are liable based on the following duties of care owed to Geraldine E. Wiggins:

- a) a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment;
- b) a duty to select and retain only competent physicians;
- c) a duty to oversee all persons who practice medicine within its walls as to patient care; and,
- d) a duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients.

141. Defendants owed Geraldine E. Wiggins a duty concerning the care and treatment under a corporate negligence standard with regard to the policies, actions and inactions of the institution itself and are directly liable for their own negligence.

142. Defendants and their corporate members, managers, partners, owners, and directors breached their duties and were, therefore, negligent, careless and reckless in their duties and obligations to Geraldine E. Wiggins.

143. The aforesaid breaches of duties, corporate negligence, carelessness and recklessness of Defendants directly and proximately caused the aforesaid injuries to Decedent, including but not limited to, experience, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scarring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

144. In causing the aforesaid injuries, Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

145. The conduct of the Defendants was intentional, outrageous, willful and wanton and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

146. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demands judgment in her favor and against all Corporate Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.



**COUNT IV -SURVIVAL CLAIM**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

v.

**REHABILITATION CENTER AT BRETHREN VILLAGE, LLC, BRETHREN VILLAGE,**  
**BRETHREN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4**

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147. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

148. Plaintiff, Brenda L. Kling, Administratrix of the Estate of Geraldine E. Wiggins, deceased, also brings this action on behalf of the Estate of Geraldine E. Wiggins, deceased, under and by virtue of the Act of 1972, June 30, P.L. 508, No. 164, Section 2, eff. July 1972, as amended, 20 Pa.C.S.A. 3371, et seq., (known as the Pennsylvania Survival Act”).

149. Plaintiff, Brenda L. Kling, as daughter and Administratrix of the Estate of Geraldine E. Wiggins, deceased, is a survival claim beneficiary.

150. Plaintiff, Brenda L. Kling, as Administratrix of the Estate of Geraldine E. Wiggins, deceased, also claims on behalf of the Estate of Geraldine E. Wiggins, deceased, all damages recoverable under the Pennsylvania Survival Act, including, but not limited to damages for the conscious pain and suffering undergone by Decedent, up to and including the time of her death, which was caused by the Defendants’ breach of duties, negligence, carelessness, and recklessness.

151. Plaintiff claim damages for the fright and mental suffering attributable to the peril leading to the physical manifestation of mental and physical injuries experience, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life’s pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

152. In causing the aforesaid injuries, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.



153. As a result of the death of Geraldine E. Wiggins, her Estate has been deprived of the economic value of the Decedent's life during the period of her life expectancy and Plaintiff, as Administratrix of the Estate of Geraldine E. Wiggins, deceased, claim damages for pecuniary loss sustained by the Estate as a result of her death, as well as for the conscious pain and suffering undergone by Decedent, up to and including the time of her death.

154. The conduct of the Defendants was intentional, outrageous, willful, wanton and exhibited a reckless indifference to the safety, health, welfare, and well-being of Geraldine E. Wiggins.

155. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demands judgment in her favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT V - WRONGFUL DEATH CLAIM**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

v.

**REHABILITATION CENTER AT BRETHREN VILLAGE, LLC, BRETHREN VILLAGE,  
BRETHREN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4**

156. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

157. Plaintiff also brings this action on behalf of Decedent's estate under and by virtue of the Act of 1855 P.L. 30, as amended, Pa.R.C.P. 2202, as further amended, July 1976, 42Pa.C.S.A. 8301 (known as the "Pennsylvania Wrongful Death Act").

158. Plaintiff, Brenda L. Kling, as daughter and Administratrix of the Estate of Geraldine E. Wiggins, deceased, is a wrongful death beneficiary.

159. Plaintiff claims all damages recoverable under the Pennsylvania Wrongful Death Act, including, but not limited to damages for pecuniary loss suffered by Decedent's survivors by reason of the death of Geraldine E. Wiggins, as well as for the reimbursement for medical expenses, nursing expenses, funeral expenses, expenses of administration and other expenses incurred in connection therewith.

160. As a result of the death of Geraldine E. Wiggins, the aforesaid survivors have been deprived of the comfort, aid, assistance, tutelage, maintenance, and companionship that they would have received from Decedent for the remainder of her natural life.

WHEREFORE, Plaintiff demands judgment in her favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT VI- BREACH OF FIDUCIARY DUTY**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

v.

**REHABILITATION CENTER OF BRETHREN VILLAGE, LLC**

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161. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

162. At all times material and relevant hereto, Geraldine E. Wiggins was incapable of dealing with the facility, Brethren Village, on equal terms, and was incapable of engaging in any arm's length relationship with them.

163. Additionally, at all times material and relevant hereto, Geraldine E. Wiggins was incapable of independently providing for her own safety, health, welfare and well-being and justifiably relied on the Facility to provide necessary care and services to attain and/or maintain her highest practicable physical, mental and psychosocial well-being.

164. At all times material and relevant hereto, the Facility individually and/or collectively fostered and forged a relationship of special confidence and trust with Geraldine E. Wiggins by admitting her into their care on April 13, 2021, and by reserving the right to specifically determine the level of care, safety, protection, services and supplies that would be provided to Geraldine E. Wiggins.

165. At all times material and relevant hereto, the Facility individually and/or collectively controlled and oversaw every single aspect of Geraldine E. Wiggins's existence, including her activities of daily living (ADL), custodial care, as well as skilled nursing and healthcare.

166. At all times material and relevant hereto, the facility individually and/or collectively determined and orchestrated the most trivial as well as the most vital aspects of Geraldine E. Wiggins's



existence, from the type of clothing she wore, to when and how she received healthcare, as well as quality and quantity of food and water she could consume.

167. As a result, Geraldine E. Wiggins was solely and entirely dependent upon the Facility's staff, employees, agents, officers and directors, to provide for her basic daily care, skilled nursing and healthcare, services, safety, protection, well-being and personal and intimate needs.

168. Geraldine E. Wiggins reposed a special confidence into the Facility's staff, employees, agents, officers and directors to provide her with necessary care and services to attain and/or maintain her highest practicable physical, mental, and psychosocial well-being.

169. At all times material hereto, the Facility developed a special relationship with Geraldine E. Wiggins by virtue of the type of the care and services she required, their supposedly superior knowledge, skill and expertise, and their overmastering dominance over Geraldine E. Wiggins and by virtue of Geraldine E. Wiggins's weakness, dependence and inability to independently provide for her own safety, health, welfare and well-being and her justifiable reliance on the Facility to provide for her safety, health, welfare and well-being.

170. In their special relationship with one another, Geraldine E. Wiggins, a vulnerable and dependent individual, did not and could not deal with the Facility on equal terms due to the Facility's overmastering dominance on one side, and due to Geraldine E. Wiggins's weakness and justifiable trust on another side.

171. At all times material hereto, Geraldine E. Wiggins entrusted her care, treatment, as well as every single aspect of her very existence into the exclusive care, custody and control of the Facility and its staff, employees, agents, officers and directors.

172. At all times material hereto, the aforementioned special relationship enabled the facility to occupy a position of confidence regarding Geraldine E. Wiggins requiring fidelity, loyalty and scrupulous fairness and good faith on the part of the Facility.

173. The aforementioned special relationship further required the Facility to refrain from using its position to Geraldine E. Wiggins's detriment and the facility's own advantage.



174. As such, and at all times material hereto, the facility, Rehabilitation Center at Brethren Village, LLC, was a fiduciary of Geraldine E. Wiggins.

175. At all times material hereto, the Facility owed a fiduciary duty to Geraldine E. Wiggins.

176. The Facility breached its fiduciary duty and its fiduciary obligations, as well as violated its relationship of trust and special confidence owed to Geraldine E. Wiggins by: a) engaging in the conduct set forth in detail in the within Fourth Amended Complaint; and b) allowing revenues, profits and assets obtained from the Facility's patients as well as their payor sources for inflated, improper and unreasonable inter-company fees and transfers designed and created for the benefit of the facility's owners, parent companies, affiliates and the Defendants herein, instead of utilizing said resources effectively and efficiently in order to maintain and/or attain the highest practicable physical, mental and psychosocial well-being of the Facility's residents, including Geraldine E. Wiggins.

177. In their dealings with Geraldine E. Wiggins, as described herein, the Facility acted in bad faith, and used its position of trust and special confidence to their own advantage and to Geraldine E. Wiggins's detriment.

178. In violating its fiduciary duties and obligations to Geraldine E. Wiggins, the Facility knew or should have known, that Geraldine E. Wiggins would suffer harm.

179. The conduct of the Facility was intentional, outrageous, willful, wanton and exhibited a reckless indifference to the safety, health, welfare and well-being of Geraldine E. Wiggins.

180. The conduct of the Facility was such, that an award of punitive damages is justified.

*WHEREFORE*, Plaintiff demands judgment in her favor and against Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT VII – CORPORATE DEFENDANTS AIDING AND ABETTING BREACH OF  
FIDUCIARY DUTY**

**BRENDA L. KLING, ADMINISTRATRIX OF  
THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

**v.**

**BRETHREN VILLAGE, BRETHREN VILLAGE REALTY, LLC, JOHN DOES 1-4**

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181. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

182. Corporate Defendants knew, or should have known, of Geraldine E. Wiggins's fiduciary relationship with the Facility, Rehabilitation Center at Brethren Village, LLC, by virtue of the type of the care and services she required, the supposedly superior knowledge, skill and expertise, and their overmastering dominance over Geraldine E. Wiggins, and by virtue of Geraldine E. Wiggins' weakness, dependence and inability to independently providing for her own safety, health, welfare and well-being and is justifiable reliance on the Facility to provide for her safety, health, welfare and well-being.

183. Corporate Defendants knowingly participated in and provided substantial assistance and encouragement to the Facility in connection with the facility's breach of their fiduciary duties and obligations to Geraldine E. Wiggins, as set forth in detail in Count VI of this Fourth Amended Complaint.

184. Corporate Defendants knew, or should have known, that the facility's residents, including Geraldine E. Wiggins, were incapable of independently providing for their own care, safety and well-being, and were justifiably relying on, and solely depending upon the Facility's staff, employees, agents, officers and directors to provide for the basic daily and custodial care, skilled nursing and healthcare services, safety, welfare and well-being.

185. Additionally, Corporate Defendants knowingly assisted, encouraged, aided and abetted the Facility in its breach of fiduciary duties and obligations to the Facility's residents, including Geraldine E. Wiggins, by: a) engaging in the conduct set forth in detail in this Fourth Amended Complaint; b) exercising complete and total control over the Facility's revenues by regularly and repeatedly sweeping nearly all of the Facility's revenues into corporate account under exclusive control of the Corporate Defendants and/or their designee; c) knowingly and intentionally creating and accepting inter-company fees and transfers consisted of revenues derived from the Facility's patients and their payor sources, and designed to improperly and unjustly enrich the Corporate Defendants, instead of allowing the Facility to utilize its resources effectively and efficiently to allow the Facility's patients, including Geraldine E. Wiggins, to attain and/or maintain their highest practicable physical, mental and psychosocial well-being; d) structuring



181. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

182. Corporate Defendants knew, or should have known, of Geraldine E. Wiggins's fiduciary relationship with the Facility, Rehabilitation Center at Brethren Village, LLC, by virtue of the type of the care and services she required, the supposedly superior knowledge, skill and expertise, and their overmastering dominance over Geraldine E. Wiggins, and by virtue of Geraldine E. Wiggins' weakness, dependence and inability to independently providing for her own safety, health, welfare and well-being and is justifiable reliance on the Facility to provide for her safety, health, welfare and well-being.

183. Corporate Defendants knowingly participated in and provided substantial assistance and encouragement to the Facility in connection with the facility's breach of their fiduciary duties and obligations to Geraldine E. Wiggins, as set forth in detail in Count VI of this Fourth Amended Complaint.

184. Corporate Defendants knew, or should have known, that the facility's residents, including Geraldine E. Wiggins, were incapable of independently providing for their own care, safety and well-being, and were justifiably relying on, and solely depending upon the Facility's staff, employees, agents, officers and directors to provide for the basic daily and custodial care, skilled nursing and healthcare services, safety, welfare and well-being.

185. Additionally, Corporate Defendants knowingly assisted, encouraged, aided and abetted the Facility in its breach of fiduciary duties and obligations to the Facility's residents, including Geraldine E. Wiggins, by: a) engaging in the conduct set forth in detail in this Fourth Amended Complaint; b) exercising complete and total control over the Facility's revenues by regularly and repeatedly sweeping nearly all of the Facility's revenues into corporate account under exclusive control of the Corporate Defendants and/or their designee; c) knowingly and intentionally creating and accepting inter-company fees and transfers consisted of revenues derived from the Facility's patients and their payor sources, and designed to improperly and unjustly enrich the Corporate Defendants, instead of allowing the Facility to utilize its resources effectively and efficiently to allow the Facility's patients, including Geraldine E. Wiggins, to attain and/or maintain their highest practicable physical, mental and psychosocial well-being; d) structuring



the managing and operating business model for the Facility in such a way that constrained the Facility's ability to provide the adequate and necessary care and services to their residents, including Geraldine E. Wiggins, while simultaneously benefiting and enriching the pyramid structure corporate entities; e) overseeing, managing, and controlling the Facility's acceptance of reimbursement from residents, including Geraldine E. Wiggins, knowing that the Facility could not provide full value of the care and services to meet the care and safety needs of their residents, including Geraldine E. Wiggins; f) drafting, structuring and approving contracts between the Facility and Defendants, which the Defendants knew, or should have known, would result in diversion and depleting of the facility revenues, necessary to provide the care and services to and meet the needs of their residents, including Geraldine E. Wiggins.

186. The aforementioned conduct of the Defendants constitutes knowing and intentional aiding and abetting the Facility's breach of their fiduciary duties and obligations to the Facility's residents, including Geraldine E. Wiggins, and subjects Corporate Defendants to liability for the injuries and harm suffered by Geraldine E. Wiggins, as aforesaid.

187. In adding and abetting the Facility in their breach of fiduciary duties and obligations to Geraldine E. Wiggins, as aforesaid, Corporate Defendants knew, or should have known, that Geraldine E. Wiggins would suffer harm.

188. As a result of Corporate Defendants' aiding and abetting the Facility's breach of their fiduciary duties and obligations to the Facility's residents, including Geraldine E. Wiggins, Corporate Defendants were improperly and unjustly enriched, their Facility, Rehabilitation Center at Brethren Village, LLC, was left with inadequate staff and resources to provide for the care and meet the needs of the Facility's residents, including Geraldine E. Wiggins, and Geraldine E. Wiggins suffered foreseeable and avoidable injuries set forth herein, and more specifically, experience, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scarring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

189. The conduct of Corporate Defendants was intentional, outrageous, willful, wanton and exhibited a reckless indifference to the safety, health, welfare and well-being of Geraldine E. Wiggins.

190. The conduct of Corporate Defendants was such, that an award of punitive damages is justified.

*WHEREFORE*, Plaintiff demands judgment in her favor and against Corporate Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

ROSENBAUM & ASSOCIATES, P.C.

Dated: December 22, 2022

BY: /s/ Andrei Govorov  
Andrei Govorov, Esquire  
Counsel for Plaintiff



VERIFICATION

I verify that the statements made in the foregoing Fourth Amended Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

ROSENBAUM & ASSOCIATES, P.C.

Dated: December 22, 2022

BY: /s/ Andrei Govorov  
Andrei Govorov, Esquire  
Counsel for Plaintiff



## EXHIBIT B



## SUPPLEMENTAL STAFFING AGREEMENT

This Supplemental Staffing Agreement ("Agreement") is entered into the 22nd day of September, 2020 by and between Brethren Village Retirement Community, with its physical address at 3001 Lititz Pike in Lititz, PA 17543 ("Client"); and NurSelect, LLC, a Pennsylvania business with its administrative offices located at 630 Freedom Business Center Drive, Third Floor, King of Prussia, PA 19406 ("NurSelect").

### RECITALS

A. NurSelect is a health care employment service engaged in the business of recruiting and placing qualified nursing personnel, such as, certified nursing assistants, licensed practical nurses, and registered nurses (collectively, "NurSelect Personnel") on contractual assignments on a per-diem or temporary basis (the "Services").

B. The Client desires NurSelect, and NurSelect agrees, upon the terms and conditions more fully set forth herein, to provide NurSelect Personnel to the Client to perform the Services.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

### ARTICLE I – THE SERVICES; NURSELECT PERSONNEL

1.1 Staffing; Services. Upon receipt of a request by the Client for NurSelect Personnel, and according to the availability of the requested NurSelect Personnel, NurSelect will provide the NurSelect Personnel to the Client, from time to time, at the locations requested, to provide the Services in a quantity and with the qualifications specified by the Client in said request. Services will be provided by NurSelect Personnel that (a) meet the highest professional standards and principles applicable to Services; and (b) shall be provided timely in accordance with the needs of the patient receiving the Services. Services shall be provided: (x) in accordance with federal, state and local laws, rules, ordinances and regulations; and (y) consistent with the policies and procedures of Client. Neither NurSelect, nor NurSelect Personnel shall do or omit to do anything that would jeopardize the licensure of the Client or its participation in governmental health programs, including Medicare and Medicaid.

1.2 Licensure and Certification of NurSelect Personnel. All NurSelect Personnel shall, at all times while performing the Services, have the appropriate nursing licenses, certifications and/or clinical experience, background checks, reference checks and any other certification or document required by law to provide the Services. From time to time, the Client may notify NurSelect of its need for NurSelect Personnel who possess a specialized certification and/or who have particular clinical experience to provide specialized services. Subject to the terms and conditions of this Agreement, NurSelect will provide NurSelect Personnel having the appropriate licenses, certification, and/or clinical experience required by applicable law to perform such specialized services. NurSelect shall keep and make available to the Client, upon written request by the Client, all licenses, certifications and other documentation verifying clinical experience and/or such other specification needed to furnish any of the Services. NurSelect shall comply with 28 Pa. Code Section 201.21.













ARTICLE II – PAYMENT FOR SERVICES







#### ARTICLE III - STATUS OF THE PARTIES

3.1 NurSelect Employees. It is expressly understood and agreed that all NurSelect Personnel shall not be considered employees or agents of the Client but instead shall be considered leased employees of NurSelect. Further, it is expressly understood and agreed by the parties that nothing contained in this Agreement shall be construed to create a joint venture, partnership, association or other affiliation or like relationship between the parties hereto, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. NurSelect shall be solely responsible for paying NurSelect Personnel and providing NurSelect Personnel with employment benefits, if any, offered by NurSelect. NurSelect shall be solely responsible for providing unemployment insurance and workers compensation benefits to NurSelect Personnel. NurSelect shall be solely responsible to handle all unemployment and workers compensation claims involving NurSelect Personnel.

3.2 No Claims for Certain Benefits. NurSelect and its NurSelect Personnel shall not have any claim under this Agreement or otherwise against the Client for employee benefits offered by the Client to its employees, including, without limitation, vacation pay, paid sick leave, retirement benefits, social security, workers compensation, health, disability, or professional malpractice benefits of any kind. NurSelect will indemnify and hold the Client harmless from any and all claims and liability arising from claims relating to the failure of the Client to provide any such benefits to any NurSelect Personnel.

3.3 No Claims for Withholding. The Client shall not withhold, on behalf of NurSelect or any NurSelect Personnel, any sums for income tax, unemployment insurance, social security or other withholding pursuant to any applicable law or requirement of any governmental body. NurSelect shall solely be responsible for all required withholdings from NurSelect Personnel wages and for remitting the same to the applicable governmental and other parties. NurSelect shall indemnify and hold the Client harmless from any and all claims and/or liability arising from claims relating to the Client's failure to make any such withholdings on behalf of NurSelect or any NurSelect Personnel.



ARTICLE IV - INSURANCE



4.2 Proof of Insurance. NurSelect shall, upon written request from the Client, provide to the Client certificates of insurance or other appropriate evidence of satisfaction of its obligations to maintain insurance as described in this Article. NurSelect agrees that it will notify the Client at least thirty (30) days in advance of cancellation, non-renewal, or adverse change in its insurance.

ARTICLE V - APPORTIONMENT OF LIABILITY AND DAMAGES INDEMNIFICATION

5.1 Apportionment of Liability. It is hereby stipulated and agreed between the Client and NurSelect that with respect to any claim or action arising out of the Services, each entity shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements or judgments resulting from negligence, actions or omissions of its own agents, officers, and employees.



ARTICLE VI - TERM AND TERMINATION

6.1 Term. The initial term of this Agreement shall commence on the date above first written ("Commencement Date") and shall continue for one (1) year from the Commencement Date ("Term"). Except as otherwise stated herein, the Term shall be automatically extended for one (1) additional year and so on from year to year until either NurSelect or the Client give to the other no less than thirty (30) days' written notice of termination prior to the end of the then-current Term.







ARTICLE VII - CONFIDENTIAL INFORMATION



ARTICLE VIII - NON-ENGAGEMENT COVENANT





ARTICLE IX - HEALTH INSURANCE PORTABILITY AND  
ACCOUNTABILITY ACT OF 1996 PROVISIONS











ARTICLE X - OTHER TERMS AND CONDITIONS







IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and date first written above.

CLIENT:

By: David Rayha  
Name: DAVID A. RAYHA NHA  
Title: VP OPERATION/COD

NURSELECT:

By: David E. Sherry  
Name: DAVID E. SHERRY  
Title: PRESIDENT

BRENDA L. KLING, individually and as : IN THE COURT OF COMMON PLEAS  
Administratrix of the Estate of : OF LANCASTER COUNTY,  
GERALDINE E. WIGGINS, : PENNSYLVANIA

Plaintiff

NO: CI-22-04128

v.

MedMal

REHABILITATION CENTER AT  
BRETHREN VILLAGE, LLC,  
BRETHREN VILLAGE, BRETHREN  
VILLAGE REALTY, LLC, LORI  
SCHOENER, NHA, and JOHN DOES1-  
4

Defendants,

v.

NURSELECT, LLC,

Additional  
Defendant.

VERIFICATION

I verify that the statements made in the attached Third-Party Joinder Complaint are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are subject to the penalties of 18 Pa.C.S. § 4904.

Date: June 13, 2023

By:   
John Snader, FACHE  
President/CEO Brethren Village



DATE: 8/25/23  
WRIT RE-ISSUED  
ANDREW E. SPADE  
PROTHONOTARY

RECEIVED  
2023 AUG 28 AM 11:49  
CLERK'S OFFICE  
LANC. CO. PA

# EXHIBIT B



# SAXTON & STUMP

LAWYERS AND CONSULTANTS

4250 Crums Mill Road, Suite 201 • Harrisburg, PA 17112

P: (717) 216-5505 • F: (717) 547-1900

**Direct Dial:** (717) 941-1214

**Email:** [kas@saxtonstump.com](mailto:kas@saxtonstump.com)

January 12, 2023

**VIA EMAIL** ([dshelly@nurselectstaffing.com](mailto:dshelly@nurselectstaffing.com))

David Shelly, President  
NurSelect, LLC  
640 Freedom Business Center Dr.  
Third Floor  
King of Prussia, PA 19406

**Re: Brenda L. Kling, Individually and as Administratrix of the Estate of Geraldine E. Wiggins v. Rehabilitation Center at Brethren Village, et al.  
Case No. CI-22-04128, Lancaster County Court of Common Pleas  
Joinder of NurSelect, LLC**

Dear Mr. Shelly:

As you know from our prior communications, this law firm represents Brethren Village Retirement Community. A lawsuit has been commenced against Brethren Village in the Court of Common Pleas of Lancaster County related to the care and treatment of one of its residents, Geraldine Wiggins. Specifically, the lawsuit alleges negligence arising out of a fall sustained by Ms. Wiggins on May 12, 2021. Our investigation has revealed that Ayanna McDowell, CNA, who was employed by NurSelect, LLC at the relevant time, had direct involvement in this alleged fall. Upon confirming that Ayanna McDowell, CNA was an employee of NurSelect and reviewing the contractual agreement between NurSelect and Brethren Village, our office did not meet with Ms. McDowell.

You are aware that Brethren Village is a party to a Staffing Agreement with NurSelect for the provision of NurSelect Personnel on contractual assignments on a per-diem or temporary basis at Brethren Village. The Staffing Agreement contains a provision for Apportionment of Liability and Damages Indemnification. Specifically, Section 5.1 of the Staffing Agreement states:

5.1 Apportionment of Liability. It is hereby stipulated and agreed between the Client and NurSelect that with respect to any claim or action arising out of the Services, each entity shall only be liable for payment of that portion of any and all liability, costs,

January 12, 2023

Saxton & Stump

Page 2 of 2

expenses, demands, settlements or judgments resulting from negligence, actions or omissions of its own agents, officers, and employees.

Based upon this provision, Brethren Village will be filing a joinder complaint against NurSelect to invoke NurSelect's contractual agreement to indemnify Brethren Village for the alleged negligence, actions, or omissions of Ms. McDowell related the care and treatment of Ms. Wiggins. Please provide notice of this pending joinder against NurSelect to your liability insurance provider so that counsel can be assigned to represent NurSelect's interests.

Thank you for your attention to this matter.

Sincerely,

SAXTON & STUMP

*/s/ Kimberly A. Selemba*  
Kimberly A. Selemba, Esquire  
Senior Counsel

cc: John N. Snader, President/CEO, Brethren Village (via email)



# EXHIBIT C



## ***Professional Liability Insurance***

### **CLAIM OFFICE:**

**Mail claims to:**  
945 E. Paces Ferry Rd.  
Suite 1800  
Atlanta, GA 30326-1160

**Fax claims to:**  
(404) 231-3755  
(Attn: Claims Department)

**Email claims to:**  
[reportclaims@rsui.com](mailto:reportclaims@rsui.com)





## COMMERCIAL LINES COMBINATION POLICY DECLARATIONS

## Landmark American Insurance Company

(A New Hampshire Stock Co.)  
(hereinafter called "the Company")

EXECUTIVE OFFICES: 945 East Paces Ferry Road, Suite 1800, Atlanta, GA 30326-1160

Policy Number: LHC801468

RENEWAL OF: LHC794794 00

Named Insured and Mailing Address:

Producer Name:

NURSELECT LLC  
1829 NEW HOLLAND ROAD  
SUITE 13  
READING, PA 19607

Policy Period: From: 3/1/2023 To: 3/1/2024 12:01 A.M. Standard Time at the Named Insured address as stated herein.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

Business Description: ALLIED HEALTHCARE STAFFING AGENCY

## COVERAGE PARTS

## PREMIUM

## Commercial General Liability

COMMERCIAL GENERAL LIABILITY COVERAGE FORM -  
OCCURRENCE

\$ Included

## Professional Liability

MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS  
MADE AND REPORTED BASIS - BROAD

\$ Included

Total Advance Policy Premium

\$ [REDACTED]

Minimum Earned Premium

\$ [REDACTED]

Not Subject to Audit

Forms and Endorsements made a part of this policy at time of issue: Please see SCHEDULE OF ATTACHMENTS.

(Omits applicable forms and endorsements if shown in specific Coverage Form Declarations.)

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY

March 08, 2023

Date

By: 

Authorized Representative

Declarations Page 1 of 2

SubIdID#:

585559

BinderID#

Created By:

JML

RSG 50011 1020

Page 1 of 2

Policy Number: LHC801468

Effective Date: 3/1/2023  
At 12:01 A.M. Standard Time

**LIMITS OF INSURANCE:**

**CGL and Professional Liability:**

\$ See Aggregate Limits Below Policy Aggregate Limit

**Commercial General Liability:**

\$ 3,000,000 General Aggregate Limit (Other than Products-Completed Operations)

\$ 3,000,000 Products-Completed Operations Aggregate Limit

\$ 1,000,000 Personal and Advertising Injury Limit

\$ 1,000,000 Each Occurrence

\$ 5,000 Medical Payments (Any One Person)

\$ 50,000 Damage to Premises Rented to You

**Professional Liability:**

\$ 1,000,000 Each Claim

\$ 3,000,000 Aggregate

**DEDUCTIBLE:** \$ 2,500 Each Claim

<b>RETROACTIVE DATE:</b>	Coverage	Date
	Commercial General Liability	N/A
	Professional Liability	3/1/2020

THESE DECLARATIONS ARE PART OF THE COMMON POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

**NOTICE:**

This is a claims-made and reported policy. Please read the policy carefully and discuss the coverage afforded by the policy with your insurance agent or broker.



**LANDMARK AMERICAN INSURANCE COMPANY**

Policy Number: LHC801468

Insurer: Landmark American Insurance Company

Named Insured: NURSELECT LLC

**NOTICE - DISCLOSURE OF TERRORISM PREMIUM**

This Coverage Part/Policy covers certain losses caused by terrorism. In accordance with the federal Terrorism Risk Insurance Act, as amended, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to the coverage for terrorist acts certified under the Terrorism Risk Insurance Act.

As defined in Section 102(1) of the Act: The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury – in consultation with the Secretary of Homeland Security, and the Attorney General of the United States – to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

**DISCLOSURE OF PREMIUM**

The portion of your premium for the policy term attributable to coverage for terrorist acts certified under the Act is  
\$ 0.00 .

In any case, if the insured rejects terrorism coverage in any scheduled underlying policy, this policy is written to exclude terrorism.

**DISCLOSURE OF FEDERAL PARTICIPATION IN PAYMENT OF TERRORISM LOSSES**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 80% of that portion of the amount of such insured losses that exceeds the applicable **Insurer** retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

**CAP INSURER PARTICIPATION IN PAYMENT OF TERRORISM LOSSES**

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we will not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

**SCHEDULE OF POLICY ATTACHMENTS AND FORMS**

<u>Form Number</u>	<u>Form Title</u>
RSG 99054 0121	Notice - Disclosure of Terrorism Premium
RSG 51039 1017	Commercial General Liability Coverage Form - Occurrence
RSG 51044 0722	Medical Professional Liability Coverage Part Claims Made and Reported Basis - Broad
RSG 51031 0522	Common Policy Conditions
ENDT-01	Additional Insured Endorsement (Blanket) - RSG 55015 0418
ENDT-02	Communicable Disease Exclusion (CGL only) - RSG 56201 0920
ENDT-03	Cross Coverage Exclusion - Medical - Broad - RSG 56136 0319
ENDT-04	Cryptocurrency Exclusion - RSG 56216 0822
ENDT-05	Deductible Liability Insurance-Comb. Policy-Multiple Ded - RSG 94016 0916
ENDT-06	Exclusion - Correctional Medicine - RSG 56203 0321
ENDT-07	Exclusion - Designated Professional Services - RSG 56114 1118
ENDT-08	Hired and Non - owned Auto Liability
ENDT-09	Minimum Retained Premium - RSG 54025 0405
ENDT-10	Nuclear Energy Liability Exclusion - RSG 56058 0903
ENDT-11	Opioid and Controlled Substance Exclusion - RSG 56191 0421
ENDT-12	Pennsylvania - Notice of Cancellation & Nonrenewal - RSG 53015 0903
ENDT-13	Pennsylvania Surplus Lines Disclosure Notice - RSG 99091 0106
ENDT-14	Service Of Suit - RSG 94022 0407
ENDT-15	State Fraud Statement - RSG 99022 1022
ENDT-16	Supplementary Coverages Endorsement (Broad) - RSG 54207 1022
ENDT-17	Violation of Consumer Protection Laws Exclusion - RSG 56121 0822

**Policy No.:** LHC801468

RSG 54081 0710



## LANDMARK AMERICAN INSURANCE COMPANY

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is an Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

**SECTION I – COVERAGES****COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY****1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle or defend any "claim" or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or "claim", knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or "claim", includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or "claim":

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

- (2) Receives a written or verbal demand or "claim" for damages because of the "bodily injury" or "property damage"; or
  - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

**d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

- (a) Employment by the insured; or
- (b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible;

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:



- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
  - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
  - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) "Claim" or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such "claim" or "suit" by or on behalf of a governmental authority.

**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
- (b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

**i. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**j. Damage To Property**

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**k. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**l. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.



**q. Asbestos**

"Bodily injury" or "property damage" for past, present or future claims arising in whole or in part either directly or indirectly, out of the manufacture, distribution, sale, re-sale, re-branding, installation, repair, removal, encapsulation, abatement, disposal of, replacement or handling of, exposure to, testing for or failure to disclose the presence of, asbestos or products containing asbestos whether or not the asbestos is or was at any time airborne as a fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this insurance does not apply to "bodily injury" or "property damage" including expenses for;

- (1) The costs of clean up or removal of asbestos or products and materials containing asbestos;
- (2) The cost of such actions as may be necessary to monitor, assess and evaluate the release or threat of asbestos or products and material containing asbestos;
- (3) The cost of disposal of asbestos substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result; or
- (4) The cost of compliance with any law or regulation regarding asbestos.

**r. Biological Contaminants**

Any "claim" arising out of a "biological contaminant".

"Biological contaminant" means any biological irritant or contaminant including but not limited to any form of mold, mildew, mushroom, yeast, fungus, bacteria, virus, insect, allergen and any other type of biological agent, including any substance produced by, emanating from, or arising out of such "biological contaminant".

**s. Employment Practices**

Any "claim" arising out of or in any way related to:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, performance evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment related practices, procedures, policies, acts or omissions; or
- (4) Consequential "bodily injury" or "personal and advertising injury" as a result of (1) through (3) above.

This exclusion applies whether the Insured may be held liable as an employer or in any other capacity and to any obligation to share "damages" with or to repay someone else who must pay "damages" because of the injury.

It is further agreed that no coverage shall apply under this policy to any "claim" brought by or against any spouse, child, parent, brother or sister of the Insured or any other person.

The Company shall not have a duty to defend any "claim", "suit", arbitration or any other form of a trial court proceeding.

**t. Lead**

"Bodily injury" or "property damage" for past, present or future claims arising in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, re-branding, installation, repair, removal, encapsulation, abatement, disposal of, replacement or handling of, exposure to, ingestion of or testing for, lead or products containing lead whether or not the lead is or was at any time airborne as a particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this insurance does not apply to "bodily injury" or "property damage" including expenses for:

- (1) The costs of clean up or removal of lead or products and materials containing lead;
- (2) The cost of such actions as may be necessary to monitor, assess and evaluate the release or threat of same, of lead or products and material containing lead;
- (3) The cost of disposal of lead substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result; or
- (4) The cost of compliance with any law or regulation regarding lead.

**u. Sexual Abuse**

Any "claims" involving the use of excessive influence or power on any individual, or the actual or alleged inappropriate physical contact or contact that is deemed by or alleged by the individual to be sexual or in any way unwelcome.

**v. Prior Knowledge**

Any alleged act, error, omission, or circumstance likely to give rise to a "claim" that an Insured had knowledge of prior to the effective date of this policy. This exclusion includes, but is not limited to any prior "claim" or possible "claim" referenced in the Insured's application.

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section **III – Limits Of Insurance**.

## **COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY**

### **1. Insuring Agreement**

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle or defend any "claim" or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **III – Limits Of Insurance**; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

- b.** This insurance applies to "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

### **2. Exclusions**

This insurance does not apply to:

**a. Knowing Violation Of Rights Of Another**

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

**b. Material Published With Knowledge Of Falsity**

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

**c. Material Published Prior To Policy Period**

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

**d. Criminal Acts**

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

**e. Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

**f. Breach Of Contract**

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

**g. Quality Or Performance Of Goods – Failure To Conform To Statements**

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

**h. Wrong Description Of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

**i. Infringement Of Copyright, Patent, Trademark Or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

**j. Insureds In Media And Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **15.a.**, **b.** and **c.** of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**k. Electronic Chatrooms Or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**l. Unauthorized Use Of Another's Name Or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.



**m. Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

**n. Pollution-related**

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) "Claim" or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**o. Asbestos**

"Personal and advertising injury" for past, present or future claims arising in whole or in part either directly or indirectly, out of the manufacture, distribution, sale, resale, re-branding, installation, repair, removal, encapsulation, abatement, disposal of, replacement or handling of, exposure to, testing for or failure to disclose the presence of, asbestos or products containing asbestos whether or not the asbestos is or was at any time airborne as a fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this insurance does not apply to "personal and advertising injury" including expenses for:

- (1) The costs of clean up or removal of asbestos or products and materials containing asbestos;
- (2) The cost of such actions as may be necessary to monitor, assess and evaluate the release or threat of asbestos or products and material containing asbestos;
- (3) The cost of disposal of asbestos substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result; or
- (4) The cost of compliance with any law or regulation regarding asbestos.

**p. Biological Contaminants**

Any "claim" arising out of a "biological contaminant".

"Biological contaminant" means any biological irritant or contaminant including but not limited to any form of mold, mildew, mushroom, yeast, fungus, bacteria, virus, insect, allergen and any other type of biological agent, including any substance produced by, emanating from, or arising out of such "biological contaminant".

**q. Employment Practices**

Any "claim" arising out of or in any way related to:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, performance evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment related practices, procedures, policies, acts or omissions; or
- (4) Consequential "bodily injury" or "personal and advertising injury" as a result of (1) through (3) above.

This exclusion applies whether the Insured may be held liable as an employer or in any other capacity and to any obligation to share "damages" with or to repay someone else who must pay "damages" because of the injury.

It is further agreed that no coverage shall apply under this policy to any "claim" brought by or against any spouse, child, parent, brother or sister of the Insured or any other person.

The Company shall not have a duty to defend any "claim", "suit", arbitration or any other form of a trial court proceeding.

**r. Lead**

"Personal and advertising injury" for past, present or future claims arising in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, re-branding, installation, repair, removal, encapsulation, abatement, disposal of, replacement or handling of, exposure to, ingestion of or testing for, lead or products containing lead whether or not the lead is or was at any time airborne as a particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this insurance does not apply to "personal and advertising injury" including expenses for:

- (1) The costs of clean up or removal of lead or products and materials containing lead;
- (2) The cost of such actions as may be necessary to monitor, assess and evaluate the release or threat of same, of lead or products and material containing lead;
- (3) The cost of disposal of lead substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result; or
- (4) The cost of compliance with any law or regulation regarding lead.

**s. Sexual Abuse**

Any "claims" involving the use of excessive influence or power on any individual, or the actual or alleged inappropriate physical contact or contact that is deemed by or alleged by the individual to be sexual or in any way unwelcome.

**t. Prior Knowledge**

Any alleged act, error, omission, or circumstance likely to give rise to a "claim" that an Insured had knowledge of prior to the effective date of this policy. This exclusion includes, but is not limited to any prior "claim" or possible "claim" referenced in the Insured's application.

**u. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**v. Access Or Disclosure Of Confidential Or Personal Information**

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

## COVERAGE C – MEDICAL PAYMENTS

### 1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
  - (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;
 provided that:
  - (a) The accident takes place in the "coverage territory" and during the policy period;
  - (b) The expenses are incurred and reported to us within one year of the date of the accident; and
  - (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
  - (1) First aid administered at the time of an accident;
  - (2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and
  - (3) Necessary ambulance, hospital, professional nursing and funeral services.

### 2. Exclusions

We will not pay expenses for "bodily injury":

#### a. Any Insured

To any insured, except "volunteer workers".

#### b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

#### c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

#### d. Workers' Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

#### e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletics contests.

#### f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

#### g. Coverage A Exclusions

Excluded under Coverage A.

## SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any occurrence we investigate or any "claim" or "suit" against an insured that we settle or defend:
  - a. All expenses we incur.



- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the "claim" or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
  - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
  - b. This insurance applies to such liability assumed by the insured;
  - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
  - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
  - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
  - f. The indemnitee:
    - (1) Agrees in writing to:
      - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
      - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
      - (c) Notify any other insurer whose coverage is available to the indemnitee; and
      - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
    - (2) Provides us with written authorization to:
      - (a) Obtain records and other information related to the "suit"; and
      - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" but will reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

## SECTION II – WHO IS AN INSURED

### 1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

### 2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

#### (1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

#### (2) "Property damage" to property:

- (a) Owned, occupied or used by;
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;  
you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker") or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- 3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. "Claims" made or "suits" brought; or
  - c. Persons or organizations making "claims" or bringing "suits".
- 2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - b. Damages under Coverage **B**.
- 3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
- 4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
- 5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for Damages under Coverage **A** because of all "bodily injury" and "property damage" arising out of any one "occurrence".
- 6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

#### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.



## 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or offense which may result in a "claim". To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a "claim" is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the "claim" or "suit" and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or a "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

## 3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

## 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

### a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

### b. Excess Insurance

- (1) This insurance is excess over:
  - (a) Any of the other insurance, whether primary, excess, contingent or on any other basis:
    - (i) That is Fire, Extended Coverage, Builders' Risk, Installation Risk or similar coverage for "your work";
    - (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

- (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
- (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I – Coverage A – Bodily Injury And Property Damage Liability.**
- (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.
- (2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- (3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
  - (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
  - (b) The total of all deductible and self-insured amounts under all that other insurance.
- (4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**5. Premium Audit**

Premium for this coverage is computed in accordance with the Company's rules and rates. Any premium shown as advance premium may be a deposit premium only. If the premium is a deposit premium, at the close of each audit period, the Company will compute the earned premium for that period. Audit premiums are due and payable upon notice.

The Company may examine and audit the Insured's books and records at any time during the policy period and within three years after the final termination of this policy, as far as they relate to the subject matter of this policy.

The first Named Insured as shown in the Declarations must keep records of information the Company will need for premium computation and upon request must send the Company copies of the information.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom "claim" is made or "suit" is brought.

#### **8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

#### **9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 60 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

### **SECTION V – DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Claim" is a written demand for damages because of actual or alleged "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. "Claim" includes any "suit" as defined in this Policy.

5. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
- c. All other parts of the world if the injury or damage arises out of:
  - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
  - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
  - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;

provided the insured's responsibility to pay damages is determined only by actual law suits filed and maintained within the territory described in Paragraph a. above. This policy does not apply to "claims" pursued elsewhere.

6. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

7. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.



8. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
9. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

10. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

11. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

12. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or
  - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

- 13. "Mobile equipment"** means any of the following types of land vehicles, including any attached machinery or equipment:
- a.** Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b.** Vehicles maintained for use solely on or next to premises you own or rent;
  - c.** Vehicles that travel on crawler treads;
  - d.** Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1)** Power cranes, shovels, loaders, diggers or drills; or
    - (2)** Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - e.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - (2)** Cherry pickers and similar devices used to raise or lower workers;
  - f.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1)** Equipment designed primarily for:
  - (a)** Snow removal;
  - (b)** Road maintenance, but not construction or resurfacing; or
  - (c)** Street cleaning;
- (2)** Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

- 14. "Occurrence"** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 15. "Personal and advertising injury"** means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a.** False arrest, detention or imprisonment;
  - b.** Malicious prosecution;
  - c.** The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d.** Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e.** The use of another's advertising idea in your "advertisement".
- 16. "Pollutants"** mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**17. "Products-completed operations hazard":**

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1) Products that are still in your physical possession; or
  - (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
    - (a) When all of the work called for in your contract has been completed.
    - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
    - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- b. Does not include "bodily injury" or "property damage" arising out of:
  - (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
  - (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

**18. "Property damage" means:**

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from, computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- 19. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:
  - a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 20. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
- 21. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
- 22. "Your product":
  - a. Means:
    - (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:



- (a) You;
- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

**23. "Your work":**

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

(2) The providing of or failure to provide warnings or instructions.

## LANDMARK AMERICAN INSURANCE COMPANY

*This Form Provides Claims-Made Coverage.  
Please Read The Entire Form Completely.*

## MEDICAL PROFESSIONAL LIABILITY COVERAGE PART – CLAIMS MADE AND REPORTED BASIS – BROAD FORM

Throughout this document, the word “Insured” means any person or entity qualified as such under **Part I. E. Covered Persons and Entities**. The word “Company” refers to the Company providing the insurance shown on the Declarations.

Other words and phrases that appear in **bold** have special meaning. Refer to **Part III. Definitions**.

### Part I. Insuring Agreement

#### A. Covered Services

The Company will pay on behalf of the Insured, as shown in the Declarations, all sums that the Insured becomes legally obligated to pay as **Damages** and associated **Claim Expenses** arising out of a negligent act, error or omission, even if the **Claim** asserted is groundless, false or fraudulent, in the rendering of or failure to render professional services as described in the Business Description on the Declarations, provided that the:

1. **Claim** is first made against the Insured during the **Policy Period**, and reported to the Company no later than sixty (60) days after the end of the **Policy Period**;
2. Negligent act, error or omission took place in a covered territory;
3. Negligent act, error or omission took place after the **Retroactive Date** as shown in the Declarations.

#### B. Defense and Settlement

The Company will have the right and duty to defend any **Claim** against an Insured seeking **Damages** to which this policy applies, even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Company's right and duty to defend any **Claim** shall end when the Company's Limit of Liability has been exhausted by payment of **Damages** and/or **Claim Expenses**, or has been tendered to the Insured or to a court of competent jurisdiction.

The Company shall not settle any **Claim** without the Insured's written consent. The Insured shall not admit any liability for or settle any **Claim** or incur any costs, charges or expenses without the written consent of the Company.

The Company shall have the right and the duty to select legal counsel for the defense of a **Claim**. In the event the Insured is entitled by law to select independent counsel to defend the **Claim**, the **Claim Expenses** or other covered costs the Company must pay to that counsel are limited to the rates the Company actually pays to counsel retained by the Company in the defense of similar **Claims** in the community where the **Claim** is being defended. The Company may exercise the right to require that such counsel have experience in defending **Claims** similar to the one pending against the Insured. The Insured agrees that such counsel will comply with the Company's litigation guidelines and reporting requirements, timely respond to the Company's requests, and provide information regarding the **Claim** when requested.

#### C. Policy Limits

Regardless of the number of persons or entities insured or included in **Part I. E. Covered Persons and Entities**, or the number of claimants or **Claims** made against the Insured:

1. The maximum liability of the Company for **Damages** resulting from each **Claim** first made against the Insured during the **Policy Period** and the Extended Reporting Period, if purchased, shall not exceed the amount shown in the Declarations as each **Claim**;
2. The maximum liability of the Company for all **Damages** as a result of all **Claims** first made against

the Insured during the **Policy Period** and the Extended Reporting Period, if purchased, shall not exceed the amount shown in the Declarations as Aggregate.

The inclusion of more than one Insured, or the making of **Claims** by more than one person or organization, does not increase the Company's Limit of Liability. All **Claims** arising out of a single negligent act, error or omission, or a series of related negligent acts, errors or omissions by one or more Insureds shall be treated as a single **Claim** for all purposes of this policy. All **Claims** shall be deemed first made when the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period** and all such **Claims** shall be subject to the same Each Claim Limit of Liability during that **Policy Period**.

**Claim Expenses** shall be paid by the Company in addition to the applicable Limits of Liability stated in the Declarations. The Company's obligation to pay **Claim Expenses** in addition to the applicable Limits of Liability as shown in the Declarations shall be limited to an additional **Claims Expense** Limits of Liability equal to the amount as shown in the Declarations as the Each Claim Limit of Liability.

The Company shall not be obligated to pay any **Claim** for **Damages** or defend any **Claim** after the Limit of Liability has been exhausted by payment of judgments, settlements, **Claim Expenses** or any combination thereof.

#### D. Deductible Provisions

The deductible amount as shown in the Declarations shall be paid by the Insured and applies to each **Claim** and includes **Damages** or **Claim Expenses**, whether or not a loss payment is made. If the deductible amount is initially paid by the Company, the Named Insured shall reimburse the amount paid within thirty (30) days, upon written request of the Company.

#### E. Covered Persons and Entities

1. Named Insured as shown in the Declarations, and if the Named Insured is an individual, his or her spouse, or domestic partner, but only with respect to the professional services rendered by or on behalf of the Named Insured;
2. Any present or former principal, partner, officer, director, member, employee or volunteer worker of the Named Insured, but only as respects professional services rendered on behalf of the Named Insured;
3. Heirs, Executors, Administrators, and in the event of an Insured's death, incapacity or bankruptcy, legal representatives of any Insured, but only with respect to professional services rendered prior to such Insured's death, incapacity or bankruptcy;
4. Any Medical Director while acting within the scope of his/her administrative and supervisory duties for the Named Insured. It is further agreed that coverage does not apply to the Medical Director while acting within his/her capacity as a Physician, Surgeon or Dentist in the treatment, or direction of the treatment, of any patient;
5. Any student enrolled in a training program, but only while acting within the scope of their duties as such and under the direct supervision of faculty members or educators of such training program;
6. Any faculty member or educator of a training program, but only while acting within the scope of their duties as such.

#### F. Covered Territory

This policy applies to covered **Claims** arising out of negligent acts, errors or omissions committed anywhere in the world. However, the policy does not provide coverage for **Claims** made against the Insured in countries where the United States of America has declared or imposed a trade embargo or sanctions, or in countries where the United States of America does not maintain diplomatic relations.

#### G. Extended Reporting Period

If the policy is not renewed for any reason, or is cancelled for any reason other than for nonpayment of premium or deductible (whether cancelled by the Company or by the Named Insured), the Named Insured as shown on the Declarations, has the right to purchase, within sixty (60) days of policy termination, an extension of the coverage granted by this policy. This reporting period extension shall



remain in force for a period of either twelve (12), twenty-four (24), or thirty-six (36) months after the policy terminates, but only for **Claims** resulting from negligent acts, errors or omissions committed before the effective date of the cancellation or nonrenewal, and otherwise covered by this policy. Increased premiums or deductibles or modifications of coverage terms or conditions upon renewal do not constitute cancellation or nonrenewal.

The premium for this Extended Reporting Period will not exceed one hundred percent (100%) for twelve months, one hundred fifty percent (150%) for twenty-four months or one hundred seventy-five percent (175%) for thirty-six months of the full annual premium set forth in the Declarations and any attached endorsements, and must be elected and paid within sixty (60) days after the effective date of the policy's termination. Such additional premium is deemed fully earned immediately upon the inception of the Extended Reporting Period.

The Extended Reporting Period is added by endorsement and, once endorsed, cannot be cancelled. The Extended Reporting Period does not reinstate or increase the Limits of Liability. The Company's Limits of Liability during the Extended Reporting Period are part of, and not in addition to, the Company's Limits of Liability stated in the Declarations.

#### H. Supplementary Coverages

It is agreed that any and all payments made for the following is included within, and shall not be in addition to, the Policy Limits as described in this Policy.

1. The Company will pay **Claim Expenses** incurred in the defense of any disciplinary proceeding or investigation against an Insured by any licensing board, disciplinary board, peer review committee, or similar entity alleging professional misconduct or violation of the rules of professional conduct, provided that the alleged misconduct or violation first occurred after the **Retroactive Date** and arises out of the Insured's performance of the Named Insured's professional services as described in the Declarations. This provision applies only to disciplinary proceedings first brought against an Insured during the **Policy Period** and reported to the Company no later than sixty (60) days after the end of **Policy Period**. The Company's obligation to defend an Insured under the provision is subject to a sub-Limit of Liability of \$25,000 and applies only to **Claims Expenses** incurred with the consent of the Company. **Damages** are not covered by this provision.

This sub-Limit of Liability is the maximum amount payable under this provision for the **Policy Period**, regardless of the number of disciplinary proceedings first commenced during the **Policy Period** or the number of Insureds subject to disciplinary proceedings. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.

2. The Company will pay reasonable expenses incurred by the Insured at the Company's request to assist in the investigation of the **Claim** or defense of the suit, including actual loss of earnings up to \$500 a day for each Insured because of time off from work, subject to an aggregate amount of \$5,000 for each individual Insured for each **Claim**, not to exceed an aggregate amount of \$10,000 per **Policy Period**. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.
3. The Company will pay fines and penalties specified in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Health Information Technology for Economic and Clinical Health Act (HITECH) as assessed against the Insured, or assessed against third parties who make a claim on the Insured for indemnification or contribution for such fines and penalties based on violations and breaches of the privacy and security provisions of HIPAA, and HITECH, and/or regulations promulgated under said statutes relating to Protected Health Information (PHI) and electronic Protected Health Information (ePHI), but only if such violations or breaches arise out of professional services as described in the Declarations or from the handling of PHI or ePHI of the Insured's own personnel.

For the purposes of this coverage, **Claim** shall also include the notice of investigation, audit, and/or assessment of fines or penalties by the U.S. Department of Health and Human Services or the Office of Civil Rights in connection with violations of or breaches under HIPAA and/or HITECH.

For the purposes of this coverage, **Damages** shall also include HIPAA and/or HITECH fines and

penalties.

The coverage described above is subject to a sub-Limit of Liability in an aggregate amount of \$100,000. This sub-Limit of Liability is the maximum amount payable under this provision for the **Policy Period**, regardless of the number of violations and/or breaches by the Insured of the privacy and security provisions of HIPAA and HITECH and the regulations established thereunder arising from the performance of or failure to perform professional services as described in the Declarations. Any payments made under this provision are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.

4. The Company will pay **Damages** or **Claims Expenses** as a result of **Claims** arising out of circumstances involving the use of excessive influence of power on any patient, or the actual or alleged inappropriate physical contact or contact that is deemed by or alleged by any patient to be sexual or in any way unwelcomed, is limited to a sub-Limit of Liability of \$250,000 each claim and \$500,000 in the aggregate. This sub-limit of liability is part of and not in addition to the applicable Limits of Liability as shown in the Declarations. Payment of **Damages** or **Claim Expenses** by the Company reduces the applicable Limits of Liability as shown in the Declarations.

Once the sub-Limit of Liability is exhausted, no additional coverage shall be afforded by this coverage provision and the following Exclusion will be added to the policy:

It is agreed that no coverage shall apply under this policy to any **Claim** or **Claim Expenses** arising out of or involving the use of excessive influence or power on any patient, or the actual or alleged inappropriate physical contact or contact that is deemed by or alleged by any patient to be sexual or in any way unwelcomed.

## Part II. Exclusions

This policy does not apply to any **Claim** or **Claim Expenses** based upon or arising out of:

- A. **Personal and Advertising Liability.**
- B. Obligations of any Insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.
- C. **Bodily Injury** to any of the following:
  1. Officers, directors, partners, employees or volunteer workers of the Insured arising out of and in the course of employment by the insured;
  2. The spouse, child, parent, or sibling of C. (1.) above.
- D. The insolvency or bankruptcy of an Insured or of any other person, firm or organization.
- E. Dishonest, fraudulent, criminal, malicious, or intentional acts, errors or omissions committed by or at the direction of any Insured.
- F. Any business enterprise not named in the Declarations which is owned, controlled, operated or managed by any Insured.
- G. A **Claim** by one Insured under this policy against another Insured under this policy, unless such **Claim** arises solely out of professional services performed for that party.
- H. Any obligation or liability assumed by the Insured under any contract or any oral or written agreement, unless liability would have attached in the absence of such a contract or agreement, including the Insured's decision to unilaterally terminate or otherwise alter, remove or abridge any rights, benefits or obligations under any contract or agreement.
- I. The ownership, rental, leasing, maintenance, use (including operation, loading and unloading), or repair of any real or personal property, including **Damage** to property owned, occupied or used by, rented to or leased to an Insured.
- J. The rendering or failure to render professional services by the Insured as a physician, surgeon or dentist.
- K. The performance of any service by any Insured while under the influence of intoxicants or illegal drugs.

- L. The ownership, maintenance, use (including operation, loading and unloading), or entrustment to others of any aircraft, automobile, motor vehicle, mobile vehicles or watercraft owned or operated by or rented or loaned to any insured. This exclusion includes the movement of patients in and out of any motor vehicle, aircraft, automobile or watercraft.
- M. 1. The actual, alleged or threatened presence, discharge, dispersal, seepage, migration, release or escape of **Pollutants** or asbestos;
2. The failure to discover or disclose the existence or amount of **Pollutants** or asbestos;
3. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with M. (1.) or (2.) above;
4. Any request, demand or order that any Insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or, in any way respond to or assess the effects of **Pollutants** or asbestos;
5. Any **Claim** or suit by or on behalf of a governmental authority for **Damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or, in any way, responding to, or assessing the effect of **Pollutants** or asbestos.
- N. 1. Refusal to employ;
2. Termination of employment;
3. Coercion, demotion, performance evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, retaliation or other employment related practices, procedures, policies, acts or omissions;
4. Consequential **Bodily Injury** or **Personal Injury** as a result of N. (1.) through (3.) above.
- This exclusion applies whether the Insured may be held liable as an employer or in any other capacity and to any obligation to share **Damages** with or to repay someone else who must pay **Damages** because of the injury.
- It is further agreed that no coverage shall apply under this policy to any **Claim** brought by or against any spouse, child, parent, brother or sister of the Insured or any other person. The Company shall not have a duty to defend any **Claim**, suit, arbitration or any other form of trial court proceeding.
- O. Any alleged act, error, omission, or circumstance likely to give rise to a **Claim** that an Insured had knowledge of prior to the effective date of this policy. This exclusion includes, but is not limited to, any prior **Claim** or possible **Claim** referenced in the Insured's application.
- P. Infringement of copyright, patent, trademark, trade name, trade dress, service mark, title or slogan.
- Q. Experimental procedures and experimental products, including procedures using experimental products. Experimental procedures and products are those not approved by the United States Food and Drug Administration (FDA).
- R. Obstetrical procedures, including but not limited to any emergency obstetrical procedures.

### Part III. Definitions

- A. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
1. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
2. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
- B. **Bodily Injury** means physical or mental harm, sickness or disease sustained by a person including death resulting from any of these at any time.
- C. **Claim** means a written demand for monetary or non-monetary relief received by the Insured during the **Policy Period**, including the service of suit, or the institution of an arbitration proceeding. Additionally,



**Claims** that arise from an incident, occurrence or offense first reported by the Insured during the **Policy Period** and accepted by the Company in accordance with **Part IV. A. Notice of Claim** will be considered a **Claim** first made during the **Policy Period**.

- D. Claim Expense** means expenses incurred by the Company or the Insured with the Company's consent in the investigation, adjustment, negotiation, arbitration, mediation and defense of covered **Claims**, whether paid by the Company or the Insured with the Company's consent, and includes:
1. Attorney fees;
  2. Costs taxed against the Insured in any **Claim** defended by the Company;
  3. Interest on the full amount of any judgment that accrues after entry of the judgment and before the Company has paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit of Liability;
  4. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the available applicable policy limit and only if said **Claims** are covered by the policy;
  5. Reasonable expenses incurred by the Insured at the Company's request other than:
    - a. Loss of earnings;
    - b. Salaries or other compensation paid to the Insured or any employee of the Insured.
- E. Damages** means compensatory judgment, award or settlement, including punitive or exemplary damages, except damages for which insurance is prohibited by law. **Damages** does not include disputes over fees, deposits, commissions or charges for goods or services.
- F. Policy Period** means the period of time stated in the Declarations or any shorter period resulting from policy cancellation or amendment to the policy.
- G. Personal and Advertising injury** means injury, including consequential **Bodily Injury**, arising out of one or more of the following offenses:
1. False arrest, detention or imprisonment;
  2. Malicious prosecution or abuse of process;
  3. Wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  4. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  5. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  6. Use of another's advertising idea in your **Advertisement**; or
  7. Infringing upon another's copyright, trade dress or slogan in your **Advertisement**.
- H. Retroactive Date** means the date stated in the Declarations on or after which any alleged or actual negligent act, error or omission must have first taken place in order to be considered for coverage under this policy.
- I. Pollutants** means any solid, liquid, gaseous or thermal irritant, contaminant or toxin, whether live or inanimate; including, but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals, silica, lead, lead compounds or materials containing lead, asbestos, asbestos compounds or materials containing asbestos, radon, waste or any like substances. Waste includes materials to be recycled, reconditioned or reclaimed.

**Part IV. General Conditions.** The following Conditions are a precedent to coverage under the Policy:

**A. Notice of Claim**

The Insured must notify the Company as soon as practicable of an incident, occurrence or offense that may reasonably be expected to result in a **Claim**. Where notice to the Company of such incidents, occurrences or offenses has been acknowledged as adequate by the Company in writing, subsequent

**Claims** derived from such incidents, occurrences or offenses will be deemed as first made at the time the incident, occurrence or offense giving rise to such **Claim** was first provided. The Insured also must immediately send copies to the Company of any demands, notices, summonses or legal papers received in connection with any **Claim**, and must authorize the Company to obtain records and other information. Please send all claim information to:

Attention: **Claims** Dept.  
RSUI Group, Inc.  
945 East Paces Ferry Road, Suite 1800  
Atlanta, Georgia 30326-1160  
Or Via Email:  
[reportclaims@rsui.com](mailto:reportclaims@rsui.com)

**B. Prohibition of Voluntary Payments and Settlements**

With respect to any **Claim** covered under this policy, the Insured will not make payment, admit liability, settle **Claims**, assume any obligation, agree to arbitration or any other means of resolution of any dispute, waive any rights or incur **Claim Expenses** without prior written Company approval, except at the Insured's own cost.

**C. Cooperation**

The Insured will cooperate with the Company in the conduct of a **Claim** and, upon the Company's request, submit to examination and interrogation by the Company representative, under oath if required, and will attend hearings and trials and assist in effecting settlements, securing and giving evidence, and obtaining the attendance of witnesses. The Insured shall further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment that the Insured may have, and the Company may exercise those rights in the name of the Insured.

**D. Nonrenewal**

The Company will give the Named Insured sixty (60) days written notice prior to nonrenewal of this policy by mailing or delivering the notice to the first Named Insured's last known mailing address as shown in the Declarations.

**E. Premium and Audit**

Premium for this coverage is computed in accordance with the Company's rules and rates. Any premium shown as advance premium may be a deposit premium only. If the premium is a deposit premium, at the close of each audit period, the Company will compute the earned premium for that period. Audit premiums are due and payable upon notice.

The Company may examine and audit the Insured's books and records at any time during the **Policy Period** and within three years after the final termination of this policy, as far as they relate to the subject matter of this policy.

The first Named Insured, as shown in the Declarations, must keep records of information the Company will need for premium computation and, upon request, must send the Company copies of the information.

**F. Authorization**

The first Named Insured listed in the Declarations agrees to act as the Named Insured with respect to giving and receiving of all notices, exercising the Extended Reporting Period option, canceling the policy, paying all premiums and deductibles and receiving any return premiums that may become due.

**G. Subrogation**

In the event of any **Claim** under this policy, the Company will be subrogated to all the Insured's rights of recovery against any person or organization, and the Insured will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured will do nothing after the loss to prejudice such rights.

**H. Other Insurance**

This policy will be excess over, and will not contribute with, any other existing insurance, unless such

other insurance is specifically written to be excess of this policy.

When this insurance is excess, the Company shall have no duty under this policy to defend any **Claim** or suit that any other insurer has a duty to defend. If such other insurer refuses to defend such **Claim** or suit, the Company shall be entitled to the Insured's rights against all such insurers for any **Claim Expenses** incurred by the Company.

If it is determined that both this insurance and other insurance or self insurance apply to any **Claim** on the same basis, whether primary, excess or contingent, the Company will not be liable under this policy for a greater proportion of the **Damages** or **Claim Expenses** than the applicable Limit of Liability under the policy for such **Damages** bears to the total applicable Limit of Liability of all other insurance or self insurance, whether or not collectible against such **Claims**.

**I. Actions Against the Insurer**

No action will be taken against the Company unless, as a condition precedent, the Insured is in full compliance with all of the terms of this policy, and until the amount of the Insured's obligations to pay shall have been finally determined, either by judgment against the Insured after actual trial, or by written agreement of the Insured, the claimant and the Company.

**J. Coverage in Bankruptcy**

Bankruptcy or insolvency of the Insured or of the Insured's estate does not relieve the Company of its obligations under this policy.

**K. False or Fraudulent Claims**

If an Insured knowingly makes any **Claim** that is false or fraudulent, this insurance shall become void and entitlement to coverage for all **Claims** hereunder shall be forfeited.

**L. Application**

The Insured agrees that the statements in the application are personal representations, that they shall be deemed material and that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between the Insured and the Company, or any of its agents, relating to this insurance. The signed application, and any attachments thereto, submitted in connection with this Policy are incorporated herein and constitute a part of this Policy.



## LANDMARK AMERICAN INSURANCE COMPANY

## COMMON POLICY CONDITIONS

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All Coverage Parts included in this policy are subject to the following conditions.

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### A. CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium or deductible; or
  - b. 60 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

### B. CHANGES

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

### C. EXAMINATION OF YOUR BOOKS AND RECORDS

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

### D. INSPECTIONS AND SURVEYS

We have the right but are not obligated to:

1. Make inspections and surveys at any time;
2. Give you reports on the conditions we find; and
3. Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

1. Are safe or healthful; or
2. Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

### E. PREMIUMS

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

**F. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.



**RSUI Group, Inc.**  
945 East Paces Ferry Road  
Suite 1800  
Atlanta, GA 30326-1160

Phone (404) 231-2366  
Fax (404) 231-3755

ATTN: Health Care Providers – Applicants and Policyholders

RE: HIPAA Privacy and Security Rule Compliance

The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and associated regulations require health care providers to maintain the confidentiality of patients’ protected health information (“PHI”). PHI includes, among other things, medical records and billing records relating to medical care. As a “covered entity” under HIPAA, you are not permitted to share PHI with a “business associate” unless the business associate has provided you with a Business Associate Agreement that provides for the protection of PHI. Although a professional liability insurer may not be deemed to be a “business associate” as defined by HIPAA, we want to assure your compliance with the regulations in the event a Business Associate Agreement is necessary.

We are committed to maintaining the confidentiality of PHI that you may provide as a part of the administration of your insurance coverage. Enclosed you will find a Business Associate Agreement that explains how we will safeguard any PHI that you may provide to us in the process of underwriting your policy or handling a claim on your behalf. Please review it and keep it with your professional liability policy. You do not need to sign or return this agreement to us. Please maintain it in your files to document our mutual obligations with respect to PHI.

If you have any questions or concerns about the Business Associate Agreement, please contact Whitney Thomas at (404)260-3795 or [whitneythomas@rsui.com](mailto:whitneythomas@rsui.com).

Sincerely,

A handwritten signature in black ink that reads "Whitney Thomas". The signature is written in a cursive, flowing style.

Whitney Thomas  
Regulatory Compliance  
RSUI Group, Inc.



## **BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is executed by Landmark American Insurance Company, Covington Specialty Insurance Company, RSUI Indemnity Company and RSUI Group, Inc. ("Business Associate") in favor of its insured healthcare providers (the "Provider").

### **RECITALS**

WHEREAS, the Business Associate provides professional liability insurance to the Provider pursuant to a policy of insurance (the "Business Arrangement"), and in connection with the Business Arrangement the Provider discloses to the Business Associate certain individually identifiable protected health information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended from time to time.

WHEREAS, the parties desire to comply with the HIPAA standards for privacy of PHI of patients of the Provider, and to set forth the terms and conditions pursuant to which the parties will handle PHI that Business Associate receives in the course of performing its services for or on behalf of the Provider under the Business Arrangement.

NOW THEREFORE, for and in consideration of the recitals above, the benefits to Business Associate under the Business Arrangement and the mutual covenants and conditions herein contained, Business Associate agrees as follows:

### **SECTION 1 – DEFINITIONS**

Terms used, but not otherwise defined in the Agreement shall have the same meaning as set forth in the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rules"), 45 CFR parts 160-164, as promulgated by the United States Department of Health and Human Services ("HHS"), as amended from time to time.

### **SECTION II – OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- a. Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to Provider any use or disclosure of the PHI, of which it becomes aware, and otherwise not provided for by this Agreement.
- e. Business Associate shall require its agents and subcontractors that receive PHI from Business Associate or Provider to agree to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Business Associate agrees to make available and provide right of access to PHI held by the Business Associate that does not merely duplicate the information maintained by the Provider, to Provider at its request, or as directed by Provider, to an Individual. Business Associate shall provide access within reasonable time and manner as specified by Provider.

- g. Business Associate agrees to incorporate all amendments or corrections to PHI when notified by the Provider in writing that such information is inaccurate or incomplete. 45 CFR § 164.526
- h. Business Associate agrees to make available to the Secretary of HHS (or its designee) all internal practices, books, and records relating to the use and/or disclosure of PHI received from the Provider, for purposes of determining the Provider's compliance with the Privacy Rules, subject to attorney-client and other applicable legal privileges.
- i. Business Associate agrees to provide an accounting of such disclosures of PHI to Provider or, as directed by Provider, to an Individual in accordance with 45 CFR § 164.528, as amended from time to time. Business Associate shall provide such accounting within a reasonable time and manner as specified by the Provider.
- j. Business Associate shall comply with all applicable requirements of the HIPAA Security Rule.
- k. Business Associate shall immediately report to Covered Entity any breach of PHI, as defined by HIPAA. Business Associate shall cooperate with Covered Entity's investigation, mitigation and response efforts related to any such breach. Additionally, Business Associate shall be responsible for any costs, liabilities, damages, expenses, and attorney's fees incurred by Covered Entity related to such breach.
- l. In the event Business Associate undertakes any of Covered Entity's duties under HIPAA, Business Associate shall comply with all HIPAA regulations applicable to Covered Entity in the discharge of such duties.

## **2.1 PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE**

- a. Business Associate, its agents and employees, may use or disclose PHI as necessary to perform its duties under the Business Arrangement and only as allowed by the terms of the Business Arrangement, this Agreement, or as required or allowed by law.
- b. Business Associate may also use and/or disclose PHI as necessary for the proper management and administration of Business Associate, and to carry out the legal responsibilities of Business Associate.
- c. Business Associate agrees that it will not use or disclose PHI in a manner that violates or would violate the Privacy Rules, or the minimum necessary policies and procedures of the Provider that are communicated to Business Associate.
- d. Business Associate may use PHI to report violations of the law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

## **SECTION III – OBLIGATIONS OF THE PROVIDER**

- a. Provider shall notify Business Associate of any limitation(s) in the Provider's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. Provider shall notify Business Associate, in writing and in a timely manner, of any restrictions or other arrangement to which the Provider has agreed with an individual in accordance with 45 CFR § 164.522, to the extent that such changes may affect Business Associate's use or disclosure of PHI hereunder; provided however, that the Provider will not agree to, and Business Associate will not be required to comply with, any restriction that is inconsistent with the purpose or terms of the Business Arrangement.

### **3.1 PERMISSIBLE REQUESTS BY PROVIDER**

Provider shall not request Business Associate to use and/or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Provider; provided however, that the Business Associate will use or disclose PHI for management and administrative activities of the Business Associate as outlined in Section 2.1.

## **SECTION IV – TERM AND TERMINATION**

### **4.1 TERM AND TERMINATION**

This Agreement shall remain in effect for the entire term of the Business Arrangement, or until terminated as set forth herein. This Agreement will automatically terminate without further action of the parties upon the termination or expiration of the Business Arrangement, subject to the following:

The Provider acknowledges and agrees that, due to the nature of the Business Arrangement, the Business Associate must have the ability to receive PHI from the Provider for as long as the Business Arrangement is in place, and that the Business Associate must have the ability to receive PHI from the Provider for the duration of any defense obligations arising under the Business Arrangement. Thus, the Provider acknowledges and agrees that termination of this Agreement is not feasible as long as the Business Arrangement is in place, or as long as Business Associate has any defense obligations arising under the Business Arrangement. Accordingly, any other provision in this Agreement notwithstanding, the parties agree that (a) any notice of termination of this Agreement will also serve as notice of termination of the Business Arrangement, (b) the termination of this Agreement will under no circumstances be effective until the termination of the Business Arrangement is effective, and (c) this Agreement may not be terminated and will remain in effect as long as Business Associate has any defense obligations arising under the Business Arrangement.

### **4.2 TERMINATION FOR MATERIAL BREACH**

Subject to Section 4.1, upon Provider's knowledge of a material breach by Business Associate, Provider shall either:

- a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Business Arrangement if Business Associate does not cure the breach or end the violation within a reasonable time specified by the Provider;
- b. Immediately terminate this Agreement and the Business Arrangement if the Business Associate has breached a material term of this Agreement and cure is not possible; or
- c. If neither termination nor cure is feasible, Provider shall report the violation to the Secretary of HHS.

### **4.3 RETURN/DESTRUCTION OF PHI**

Except as provided in Section 4.4, upon termination of the Business Arrangement (and any ongoing defense obligations, if applicable), for any reason, Business Associate will, if feasible, return or destroy PHI received from, or created or received by it on behalf of the Provider that Business Associate maintains in any form, including any backup tapes. Business Associate shall retain no copies of such information. Business Associate further agrees to use its best efforts to recover PHI in the possession of subcontractors or agents.



#### 4.4 NO FEASIBLE OR PRACTICAL RETURN/DESTRUCTION OF PHI

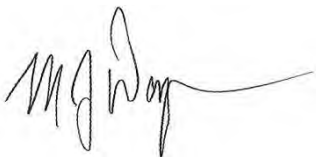
Business Associate has determined that returning or destroying PHI is infeasible for ongoing defense obligations (if applicable), state regulatory requirements imposed upon professional liability insurers, such as reporting, review, and audit requirements, and carrying out any necessary business responsibility of the Business Associate. This serves as Business Associate's notification to Provider of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

#### SECTION V – MISCELLANEOUS

- a. Regulatory References – A reference in this Agreement to a section of the Privacy Rule means the section as in effect or as amended.
- b. Amendment – The parties recognize that this Agreement may need to be modified from time to time and agree to take such action as is necessary to amend this Agreement for Provider to comply with federal and state law including, but not limited to the requirements of the Privacy Rule and HIPAA.
- c. Survival – The respective rights and obligations of Business Associate under Section 4.3 of this Agreement shall survive the termination of this Agreement.
- d. Notices – All notices and other communications required or permitted pursuant to this Agreement shall be in writing, addressed to the party at the party's regular business address. All notices and other communications shall be sent by overnight courier or sent by registered or certified mail, return receipt requested.
- e. Interpretation – Any ambiguity in this Agreement shall be resolved to permit Provider to comply with HIPAA and the Privacy Rules.

#### BUSINESS ASSOCIATE:

Signed:



Michael Wayman  
Senior Vice President  
RSUI Group, Inc.

Address for Notice:

RSUI Group, Inc.  
945 East Paces Ferry Road  
Suite 1800  
Atlanta, GA 30326-1160

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **ADDITIONAL INSURED ENDORSEMENT (BLANKET)**

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This endorsement modifies insurance provided under the following:

### **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD**

1. In consideration of the premium charged, the following is added as an Additional Insured, but solely with regard to professional services rendered or that should have been rendered by the Named Insured:

Any person or organization to whom or to which the Named Insured is obligated by virtue of a written contract or by the issuance or existence of a written permit, to provide insurance such as is afforded by this policy.

2. It is also agreed that the policy does not apply to:
  - a. **Claims** by an Additional Insured against the Named Insured;
  - b. **Claims** that include allegation or facts indicating sole liability on the part of an Additional Insured.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 01

*This Endorsement Changes The Policy. Please Read It Carefully.*

## COMMUNICABLE DISEASE EXCLUSION

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This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2. **Exclusions** of Section I – **Coverage A – Bodily Injury And Property Damage Liability**:

**2. Exclusions**

This insurance does not apply to:

**Communicable Disease**

"Bodily injury" or "property damage" arising out of the actual or alleged transmission of a "communicable disease".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a "communicable disease";
- b. Testing for a "communicable disease";
- c. Failure to prevent the spread of the disease; or
- d. Failure to report the disease to authorities.

- B. The following exclusion is added to Paragraph 2. **Exclusions** of Section I – **Coverage B – Personal And Advertising Injury Liability**:

**2. Exclusions**

This insurance does not apply to:

**Communicable Disease**

"Personal and advertising injury" arising out of the actual or alleged transmission of a "communicable disease".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a "communicable disease";
- b. Testing for a "communicable disease";
- c. Failure to prevent the spread of the disease; or
- d. Failure to report the disease to authorities.

- C. For the purposes of this exclusion:

"Communicable disease" means any illness or disease caused by an infectious agent or its toxins, including but not limited to any bacteria, virus, mold, mildew, fungi, or parasite, that occurs through the direct or indirect transmission of the infectious agent or its product.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 02



*This Endorsement Changes The Policy. Please Read It Carefully.*

## **CROSS COVERAGE EXCLUSION – MEDICAL BROAD FORM**

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This endorsement modifies insurance provided under the following:

### **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE**

The Medical Professional Liability coverage and the Commercial General Liability coverage provided in this Policy are mutually exclusive.

It is agreed that any claim, damages, Supplementary Payments, or any amounts covered under the Commercial General Liability Coverage Form Claims Made RSG 51030 shall not also be covered under the Medical Professional Liability Coverage Part Claims Made and Reported Basis-Broad-RSG 51044.

It is further agreed that any **Claim, Damages, or Claim Expenses** or any amounts covered under the Medical Professional Liability Coverage Part Claims Made and Reported Basis-Broad-RSG 51044 shall not also be covered under the Commercial General Liability Coverage Form Claims Made RSG 51030. Whenever any **Claim** is determined to be covered, either wholly or in part, by the Medical Professional Liability Coverage Part Claims Made and Reported Basis-Broad-RSG 51044, the Commercial General Liability Coverage Form shall not apply and the maximum liability of the Company shall not exceed the Professional Liability Each Claim limit of liability shown in the Declarations.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 03

*This Endorsement Changes The Policy. Please Read It Carefully.*

## CRYPTOCURRENCY EXCLUSION

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This endorsement modifies insurance provided under the following:

**MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE**

1. In consideration of the premium charged, it is agreed that no coverage shall apply under this policy to any **Claim** and/or **Claim Expenses** alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving **Cryptocurrency** or any **Cryptocurrency Offering**.
2. It is agreed that the following definitions are added to **Part III. Definitions**:
  - A. **Cryptocurrency** means any actual or purported electronic, computer derived, digital or virtual instrument, asset, currency, token, coin, unit of account, store of value, funds, or medium of exchange using encryption techniques, methodologies, or technology, including blockchain or similar mechanisms, to secure, verify and/or validate the transfer of such electronic, computer derived, digital or virtual instrument, asset, currency, unit of account, store of value, funds, or medium of exchange between one or more parties.
  - B. **Cryptocurrency Offering** means any direct, indirect, actual, alleged, attempted, or proposed purchase or sale, or offer to purchase or sell, any **Cryptocurrency** issued or created by, or in connection with the Insured.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 04

*This Endorsement Changes The Policy. Please Read It Carefully.*

## DEDUCTIBLE LIABILITY INSURANCE (COMBINATION POLICY – MULTIPLE DEDUCTIBLES)

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Coverage	Amount and Basis of Deductible	
	PER CLAIM	or PER OCCURRENCE
1) Bodily Injury Liability OR		
2) Property Damage Liability OR		
3) Personal and Advertising Injury Liability OR		
4) Bodily Injury Liability, Property Damage Liability, Personal and Advertising Injury Liability	\$ 2,500	

**APPLICATION OF ENDORSEMENT** (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all “Bodily Injury”, “Property Damage” and “Personal and Advertising Injury” Liability, however caused):

1. Our obligation under the Bodily Injury Liability, Property Damage Liability, and Personal and Advertising Injury Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.
2. The deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:
  - A. PER CLAIM BASIS. If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:
    - 1) Under Bodily Injury Liability coverage, to all damages sustained by any one person because of “Bodily Injury”;
    - 2) Under Property Damage Liability Coverage, to all damages sustained by any one person because of “Property Damage”;

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 05



- 3) Under Personal and Advertising Injury Liability Coverage, to all damages sustained by any one person because of "Personal and Advertising Injury".
- 4) Under Bodily Injury Liability, Property Damage Liability, and Personal and Advertising Injury Liability Coverages Combined, to all damages sustained by any one person because of:
  - a) "Bodily Injury";
  - b) "Property Damage";
  - c) "Personal and Advertising Injury".

If damages are claimed for care, loss of services or death resulting at any time from "Bodily Injury", a separate deductible amount will be applied to each person making a claim for such damages.

With respects to "Property Damage" and "Personal and Advertising Injury" Liability, person includes an organization.

- B. PER OCCURRENCE BASIS. If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:

- 1) Under Bodily Injury Liability Coverage, to all damages because of "Bodily Injury";
- 2) Under Property Damage Liability Coverage, to all damages because of "Property Damage";
- 3) Under Personal and Advertising Injury Liability Coverage, to all damages sustained by any one person because of "Personal and Advertising Injury".
- 4) Under Bodily Injury Liability, Property Damage Liability, and Personal and Advertising Injury Liability Coverages Combined, to all damages sustained by any one person because of:
  - a) "Bodily Injury";
  - b) "Property Damage";
  - c) "Personal and Advertising Injury".

3. The terms of this insurance, including those with respect to:

- a) Our right and duty to defend any "suits" seeking those damages; and
  - b) Your duties in the event of any "occurrence", claim, or "suit"
- apply irrespective of the application of the deductible amount.

4. We may pay any part of all of the deductible amount to effect settlement of any claims or "suit" and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.
5. When used in this endorsement, damages includes any payments made under the Supplementary Payments provisions of this policy.
6. If you do not promptly reimburse us for any deductible amount owned, then any cost incurred by us in collection of the deductible amount will be added and applied in addition to the applicable deductible amount without limitation. These costs include, but are not limited to, collection agency fees, attorney's fees and interest.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **EXCLUSION – CORRECTIONAL MEDICINE**

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This endorsement modifies insurance provided under the following:

### **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD**

In consideration of the premium charged, it is agreed no coverage shall apply under this policy to any **Claim** and/or **Claim Expenses** based upon, arising out of, or in any way involving the rendering of or failure to render services of a professional nature, including healthcare services and medical services, by the Insured or by any person or organization for whose acts, errors or omissions the Insured is legally responsible, in a correctional facility or center, detention center, jail, penal institution, prison, remand center, reformatory, or any similar center, facility, or institution.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 06

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **EXCLUSION – DESIGNATED PROFESSIONAL SERVICES**

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This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

#### **SCHEDULE**

<b>Description Of Professional Services:</b>
ALLIED HEALTHCARE STAFFING AGENCY

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to any professional services shown in the Schedule, the following exclusion is added to Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** and Paragraph 2., **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability**:

This insurance does not apply to “bodily injury”, “property damage” or “personal and advertising injury” due to the rendering of or failure to render any professional service.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 07



*This Endorsement Changes The Policy. Please Read It Carefully.*

## HIRED AND NON-OWNED AUTO LIABILITY

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE FORM

In consideration of an additional premium of \$Included, it is hereby understood and agreed that the policy is amended as follows:

- A. The declarations page is amended to include the following under **Commercial General Liability** in the **LIMITS OF INSURANCE** section:
- |             |   |
|-------------|---|
| \$1,000,000 | Hired Auto and Non-Owned Auto Liability Each Occurrence |
| \$1,000,000 | Hired Auto and Non-Owned Auto Liability Aggregate       |
- B. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage A. applies, **SECTION II – WHO IS AN INSURED** is deleted and replaced with the following:
1. Each of the following is an insured to the extent set forth below.
    - a. You.
    - b. Any other person using a “hired auto” with your permission.
    - c. With respect to a “non-owned auto”, any partner or “executive officer” of yours, but only while such “non-owned auto” is being used in your business.
    - d. Any other person or organization, but only with respect to their liability because of acts or omissions of an insured under paragraphs a., b. or c. above.
  2. None of the following is an insured:
    - a. Any partner or “executive officer” with respect to any “auto” owned by such partner or officer or a member of his or her household;
    - b. The owner or lessee (of whom you are a sub-lessee) of a “hired auto” or the owner of a “non-owned auto” or any agent or “employee” of any such owner or lessee; or
    - c. Any person or organization with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.
- C. **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, is amended by the addition of the following:
- Hired Auto and Non-Owned Auto Liability: The insurance provided under **COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, shall apply to “bodily injury” and “property damage” arising out of the:
1. maintenance or use of a “hired auto” by you or your “employees” in the course of your business; or
  2. use of a “non-owned auto” by any person other than you in the course of your business.
- D. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage A applies, the definition of “insured contract” in **SECTION VI – DEFINITIONS**, is deleted and replaced with the following:

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 08

"Insured contract" means that part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

- E. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, **SECTION V – DEFINITIONS** is amended by the addition of the following:

"Hired auto" means any "auto" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your "employees", your partners, your "executive officers", or "volunteer workers", or members of their households.

"Non-owned auto" means any "auto" you do not own, lease, hire, rent or borrow which is used in connection with your business. This includes "autos" owned by your "employees", your partners, your "executive officers", or "volunteer workers", or members of their households, but only while used in your business.

- F. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, subparagraph **g.** of paragraph 2., **Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** (Section I – Coverages) is deleted and replaced as follows:

- g.** any "claim" based upon or arising out of "bodily injury" or "property damage" arising out of the ownership, maintenance, operation, use or entrustment to others or loading or unloading of:

- (1) any aircraft or watercraft owned or operated by or rented or loaned to any Insured; or
- (2) any other aircraft or watercraft operated by any person in the course of his/her employment or activities on behalf of the Named Insured.

- G. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, subparagraph **j.** of paragraph 2., **Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** (Section I – Coverages) is deleted and replaced as follows:

- j.** any "claim" based upon or arising out of "property damage" to:

- (1) property owned or being transported by or rented or loaned to the Insured; or
- (2) property in the care, custody or control of the Insured.

- H. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, subparagraph **c.** of paragraph 2., **EXCLUSIONS OF COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** (Section I – coverages) is deleted.

- I. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, **SECTION III – LIMITS OF INSURANCE** is amended by the addition of the following:

The Hired Auto and Non-Owned Auto Liability Each Occurrence limit shown in paragraph **A.** of this endorsement is the most we will pay for damages because of all "bodily injury" and "property damage" with respect to Hired Auto and Non-Owned Auto Liability arising out of any one "occurrence".

The Hired Auto and Non-Owned Auto Liability Aggregate limit shown in paragraph **A.** of this endorsement is the most we will pay because of all "bodily injury" and "property damage" with respect to all Hired Auto and Non-Owned Auto Liability.

- J. Paragraph 2. of **SECTION III – LIMITS OF INSURANCE** is deleted and replaced by the following:

2. The General Aggregate Limit is the most we will pay for the sum of:

- a. Damages under Coverage **A** including Hired Auto and Non-Owned Auto Liability, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- b. Damages under Coverage **B.**

- K. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, paragraph 4. **Other Insurance** in **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted and replaced with the following:

This insurance is excess over any primary insurance covering any "hired auto" or any "non-owned auto".

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **MINIMUM RETAINED PREMIUM**

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This endorsement modifies insurance provided under the following:

### **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE**

In the event of cancellation of this policy by the Insured, return premium shall be computed at .90 of the pro rata unearned policy premium, subject however to a retention by the company of not less than \$5,625.00.

Nothing in this endorsement is deemed to affect the Company's cancellation rights which remain as indicated in the coverage form.

It is further agreed that return premium may be allowed on a pro rata basis if cancelled for non payment of premium or deductible, subject however to retention by the company of the minimum retained premium as shown above.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
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Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 09



*This Endorsement Changes The Policy. Please Read It Carefully.*

## **NUCLEAR ENERGY LIABILITY EXCLUSION**

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This endorsement modifies insurance provided under the following:

**MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE**

**This policy does not apply;**

- a. Under any Liability Coverage**, to bodily injury or property damage;
  - (1) with respect to which an Insured under the policy is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Associates of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;
- b. Under any Medical Payments Coverage** or any Supplemental Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization;
- c. Under any Liability Coverage** to bodily injury or property damage resulting from the hazardous properties of nuclear material, if:
  - (1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an insured, or (b) has been discharged or dispersed therefrom;
  - (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
  - (3) the bodily injury or property damage arises out of the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility but if such facility is located within the United States of America, its territories or possessions, or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat;
- d. As used in this Endorsement:**
  - (1) "Hazardous properties" include radioactive, toxic, or explosive properties;
  - (2) "Nuclear material" means source material, special nuclear material or byproduct material;
  - (3) "Source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
  - (4) "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor,

This endorsement effective 3/1/2023  
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Endorsement No.: 10

- (5) "Waste" means any waste material (a) containing byproduct material and (b) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (6), (a) or (b) thereof;
- (6) "Nuclear facility" means:
  - (a) any nuclear reactor;
  - (b) any equipment or device designed or used for (i) separating the isotopes of uranium or plutonium, (ii) processing or utilizing spent fuel, or (iii) handling, processing, or packaging waste;
  - (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste; and includes the site on which any of the foregoing is located, all operations conducted on such site, and all premises used for such operations;
- (7) "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (8) "Property damage" includes all forms of radioactive contamination of property.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## OPIOID AND CONTROLLED SUBSTANCE EXCLUSION

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This endorsement modifies insurance provided under the following:

### All Coverages without Limitation

In consideration of the premium charged, it is agreed that this Policy will not be triggered or apply and will provide no coverage for indemnity, defense, supplemental or any other exposure where **Claims**, suits, occurrences or demands of any sort, without limitation, against any Insured are:

1. Based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
  - a. Any actual or alleged abuse, misuse, illicit use, overuse, addiction, dependency, unlawful distribution, or diversion of any **Controlled Substance**;
  - b. Any supervision, instruction, training, education, recommendation, or guideline given, or which should have been given, in connection with any **Controlled Substance**; or
  - c. Inadequate or inaccurate evaluation, control or reporting of, or the failure to evaluate, control or report, the conduct or suspected conduct described in paragraph 1.a. above.
2. Brought by or on behalf of any state, municipality or other governmental entity or agency seeking damages, fines, penalties or any other type of relief, whether monetary or not, arising from or in any way related to any Insured manufacturing, selling, distributing, or dispensing **Controlled Substances**.

For the purposes of this exclusion, **Controlled Substances** shall mean:

- a. any opioid or narcotic drug, narcotic medication, or narcotic substance of any type, nature or kind, including, but not limited to, buprenorphine, codeine, fentanyl, hydrocodone, morphine, oxymorphone, tapentadol, oxycontin, hydromorphone, medperidine, methadone, oxycodone, or naloxone;
- b. any substance that is a controlled substance defined by or included in the Schedules of the Controlled Substance Act of the United States of America (21 U.S.C. § 801 et seq.) or any other judicial, statutory, regulatory or other legal measure of any nation, province, state, municipality or other governmental division or subdivision; or
- c. any substance that is in the future labelled or determined to be any of the substances described in a. or b. of this definition.

This exclusion applies even if the **Claims** or suits against any Insured allege negligence, including but not limited to negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by any Insured.

This exclusion also applies to any **Claim** or suit by or on behalf of any individual or entity seeking certification at any time as a class action, whether or not such action is actually certified, arising from or in any way related to any Insured manufacturing, selling, distributing, or dispensing **Controlled Substances**.

However, this exclusion shall not apply to any **Claim** by or on behalf of a patient, arising out of an actual or alleged negligent act, error or omission by the Insured in the prescribing, administering, or dispensing of a **Controlled Substance** for its intended use, or in providing counseling or treatment related to any **Controlled Substance**.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
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by Landmark American Insurance Company

Endorsement No.: 11



*This Endorsement Changes The Policy. Please Read It Carefully.*

## PENNSYLVANIA – NOTICE OF CANCELLATION AND NON-RENEWAL AMENDMENT

This endorsement modifies insurance provided under the following:

### MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE

**The Notice of Cancellation and non-renewal clause as contained in this policy is deleted and replaced as follows:**

The Named Insured may cancel this policy by mailing or delivering to the Company advance notice of cancellation.

The Company may cancel this policy by:

**A. CANCELLATION OF POLICIES IN EFFECT FOR SIXTY (60) DAYS OR LESS:**

If this policy has been in effect for sixty (60) days or less, the Company may cancel this policy for any reason, by mailing thirty (30) days advance notice of cancellation to the Named Insured.

**B. CANCELLATION OF POLICIES IN EFFECT FOR MORE THAN SIXTY (60) DAYS:**

If this policy has been in effect more than sixty (60) days or more, or is a renewal policy to Landmark American Insurance Company, the Company may cancel this policy only for one or more of the following reasons by mailing the following number of day advance notice to the Named Insured:

REASON FOR CANCELLATION	NUMBER OF DAYS ADVANCE NOTICE TO BE PROVIDED NAMED INSURED
Non-payment of premium (failure to pay a premium when due)	Fifteen (15) days
If the Named Insured makes a material misrepresentation that effects the insurability of risk	Fifteen (15) days
A substantial change in the risk covered by this policy	Sixty (60) days
If the Company loses its reinsurance for this policy	Sixty (60) days
If the Named Insured does not comply with policy terms, conditions or duties	Sixty (60) days
Any other reason approved the by Insurance Commissioner	Sixty (60) days

**This policy may also be cancelled from inception upon discovery that the policy was obtained through fraudulent statements, omissions, or concealment of facts material to the acceptance of the risk or to the hazard assumed by the Company**

**C. NOTICE OF NON-RENEWAL:**

In the event that the Company decides to non-renew this policy, The Company will mail at least sixty (60)

This endorsement effective 3/1/2023  
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by Landmark American Insurance Company

Endorsement No.: 12

days advance written notice of non-renewal to the Named Insured.

D. NOTICE OF INCREASE IN PREMIUM – RENEWAL:

If the Company offers renewal terms with an increase in premium, the Company will provide the Named Insured with thirty (30) days advance notice.

The cancellation or non-renewal notice will be mailed via registered or first class mail to the Named Insured at the mailing address stated in the Declarations. The cancellation or non-renewal notice will state the effective date of the cancellation as well as the reason(s) for cancellation or non-renewal and the policy will terminate on that date.

If coverage is cancelled by the Company, the earned premium shall be computed pro-rata. If coverage is cancelled by the Insured, the earned premium shall be computed short rate.

All other terms and conditions of this policy remain unchanged.

## ***IMPORTANT NOTICE***

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### **PENNSYLVANIA SURPLUS LINES DISCLOSURE NOTICE**

The insurer which has issued this insurance is not licensed by the Pennsylvania Insurance Department and is subject to limited regulation. This insurance is NOT covered by the Pennsylvania Insurance Guaranty Association.



*This Endorsement Changes The Policy. Please Read It Carefully.*

## SERVICE OF SUIT

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This endorsement modifies insurance provided under the following:

### ALL COVERAGE PARTS

In the event of our failure to pay any amount claimed to be due, we, at your request, will submit to the jurisdiction of any court of competent jurisdiction within the United States of America. Nothing in this condition constitutes or should be understood to constitute a waiver of our rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court or seek a transfer of a case to another Court as permitted by the laws of the United States or of any state in the United States, moreover, this endorsement is not an agreement that the law of a particular jurisdiction applies to any dispute under the policy.

Service of process in such suit may be made upon the Senior Claims Officer of RSUI Group, Inc. 945 East Paces Ferry Road, Suite 1800, Atlanta, GA 30326-1160, or his designee. In any suit instituted against any one of them upon this contract, we will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above named is authorized and directed to accept service of process on our behalf in any such suit and/or upon your request to give a written undertaking to you that we will enter a general appearance upon our behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America, which makes provision therefore, we hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for the purpose in the statute, or his successor or successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by you or on your behalf or any beneficiary hereunder arising out of this contract of insurance, and we hereby designate the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

All other terms and conditions of the policy remain unchanged

This endorsement effective 3/1/2023  
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by Landmark American Insurance Company

Endorsement No.: 14

## **State Fraud Statements**

(Signature Required for New York Only)

### **ARKANSAS, LOUISIANA, RHODE ISLAND, TEXAS AND WEST VIRGINIA FRAUD STATEMENT**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

### **ALASKA FRAUD STATEMENT**

A person who knowingly and with intent to injure, defraud, or deceive an insurance company files a claim containing false, incomplete, or misleading information may be prosecuted under state law.

### **ALABAMA FRAUD STATEMENT**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.

### **ARIZONA FRAUD STATEMENT**

For your protection Arizona law requires the following statement to appear on this form. Any person who knowingly presents a false or fraudulent claim for payment of a loss is subject to criminal and civil penalties.

### **CALIFORNIA FRAUD STATEMENT**

For your protection, California law requires that you be made aware of the following: Any person who knowingly presents false or fraudulent information to obtain or amend insurance coverage or to make a claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

### **COLORADO FRAUD STATEMENT**

It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

### **DELAWARE FRAUD STATEMENT**

Any person who knowingly, and with intent to injure, defraud or deceive any insurer, files a statement of claim containing any false, incomplete or misleading information is guilty of a felony.

### **DISTRICT OF COLUMBIA FRAUD STATEMENT**

**WARNING:** It is a crime to provide false, or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

### **FLORIDA FRAUD STATEMENT**

Any person who knowingly and with intent to injure, defraud or deceive any insurer, files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

#### **HAWAII FRAUD STATEMENT**

For your protection, Hawaii law requires you to be informed that any person who presents a fraudulent claim for payment of a loss or benefit is guilty of a crime punishable by fines or imprisonment, or both.

#### **IDAHO FRAUD STATEMENT**

Any person who knowingly, and with intent to defraud or deceive any insurance company, files a statement of claim containing any false, incomplete or misleading information is guilty of a felony.

#### **INDIANA FRAUD STATEMENT**

Any person who knowingly and with intent to defraud an insurer files a statement of claim containing any false, incomplete, or misleading information commits a felony.

#### **KANSAS FRAUD STATEMENT**

An act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written, electronic, electronic impulse, facsimile, magnetic, oral, or telephonic communication or statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

#### **KENTUCKY FRAUD STATEMENT**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.

#### **MAINE FRAUD STATEMENT**

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or a denial of insurance benefits.

#### **MARYLAND FRAUD STATEMENT**

Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

#### **MINNESOTA FRAUD STATEMENT**

Any person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

#### **NEW HAMPSHIRE FRAUD STATEMENT**

Any person who, with a purpose to injure, defraud or deceive any insurance company, files a statement of claim containing any false, incomplete or misleading information is subject to prosecution and punishment for insurance fraud, as provided in RSA 638:20.

#### **NEW JERSEY FRAUD STATEMENT**

Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.



### **NEW MEXICO FRAUD STATEMENT**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

### **OHIO FRAUD STATEMENT**

Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

### **OKLAHOMA FRAUD STATEMENT**

**WARNING:** Any person who knowingly and with intent to injure, defraud, or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

### **OREGON FRAUD STATEMENT**

Any person who knowingly files a claim containing a false or deceptive statement for payment of a loss or benefit or knowingly presents materially false information in an application for insurance may be guilty of a crime and may be subject to fines and confinement in prison.

### **PENNSYLVANIA FRAUD STATEMENT**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

### **PUERTO RICO FRAUD STATEMENT**

Any person who knowingly and with the intention of defrauding presents false information in an insurance application, or presents, helps, or causes the presentation of a fraudulent claim for the payment of a loss or any other benefit, or presents more than one claim for the same damage or loss, shall incur a felony and, upon conviction, shall be sanctioned for each violation by a fine of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000), or a fixed term of imprisonment for three (3) years, or both penalties. Should aggravating circumstances be present, the penalty thus established may be increased to a maximum of five (5) years, if extenuating circumstances are present, it may be reduced to a minimum of two (2) years.

### **TENNESSEE, VIRGINIA, AND WASHINGTON FRAUD STATEMENT**

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

SIGNATURE REQUIRED – NEW YORK ONLY

NEW YORK FRAUD STATEMENT

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

LHC801468  
Policy Number

NURSELECT LLC  
Insured/Applicant/Claimant (Legal Entity)

By (Authorized Representative) - Printed Name

By (Authorized Representative) - Signature

Title

Date

*This Endorsement Changes The Policy. Please Read It Carefully.*

## SUPPLEMENTARY COVERAGES ENDORSEMENT

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This endorsement modifies insurance provided under the following:

### MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD

In consideration of the premium charged, it is agreed that:

**1. Part I. Insuring Agreements, H. Supplementary Coverages** is amended to include:

1. The Company will pay **Damages** or **Claims Expenses** as a result of **Claims** arising out of an insured's professional services performed during the rendering of emergency medical treatment without remuneration, at the scene of an accident, medical crisis or disaster. This coverage is subject to a sub-Limit of Liability in an aggregate amount of \$25,000. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.
2. The Company will reimburse the Insured for **Evacuation Expenses** actually incurred in connection with an **Evacuation** which first takes place during the **Policy Period** and which is reported to the Company as soon as practicable, but in no event later than thirty (30) days after you first incur **Evacuation Expenses** for which coverage will be requested. You are not required to obtain the Company's prior written approval or consent before incurring any **Evacuation Expenses**.

This coverage is subject to a sub-Limit of Liability in an aggregate amount of \$25,000. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.

No coverage will be available for **Evacuation Expenses** arising out of any:

- a. strike or bomb threat, unless the **Evacuation** was ordered by a civil authority;
  - b. false fire alarm or planned evacuation drill;
  - c. vacating of one or more residents because of their individual medical condition;
  - d. nuclear reaction, radiation, or any radioactive contamination, however caused;
  - e. seizure or destruction of property by order of a governmental authority, provided that this exclusion shall not apply to an order of evacuation by a governmental authority due to a condition described above; or
  - f. war, including undeclared or civil war, warlike action by a military force, insurrection, rebellion, or revolution.
3. The Company will pay up to \$500 for loss that is due to **Property Damage** to your patient's tangible property if resulting directly from or during the performance of professional services as described in the Declarations. The Company will make these payments regardless of fault. These payments will not exceed \$5,000 for all such losses resulting from all professional services, regardless of the number of patients whose tangible property is injured. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.
  4. The Company will reimburse the Insured for **Legal/Media Expenses** actually incurred in connection with a **Legal Defense Proceeding** first brought against an Insured and reported during the **Policy Period** that occurred after the Policy's **Retroactive Date** and that arises out of the Insured's performance of professional services as described in the Declarations.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 16



This coverage is subject to a sub-Limit of Liability in an aggregate amount of \$25,000. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.

2. The following Definitions are in addition to Policy Definitions contained in **Part III.** and apply only to this endorsement:

**A. Evacuation** means the removal of all or the majority of patients from one or more of your locations or facilities in response to an actual or threatened, natural or man-made condition that is unexpected and unforeseen and causes the patients of such location or facility to be in imminent danger of loss of life or physical harm.

Such condition must be in the form of an emergency or sudden crisis requiring immediate action, and not the result of a latent or hidden condition at the location or facility.

**B. Evacuation Expenses** means reasonable costs and expenses actually incurred by you in connection with the **Evacuation**, including the costs associated with transporting and lodging patients who have been evacuated. **Evacuation Expenses** shall not include any remuneration, salaries, overhead, fees, or benefit expenses of the Named Insured or any Insured.

**C. Property Damage** means:

1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
2. Loss of use of tangible property of others that is not physically injured. All such loss of use shall be deemed to occur at the time of the accident, including continuous or repeated exposure to substantially the same general harmful conditions that caused it.

For the purposes of this coverage, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**D. Legal Defense Proceeding** means:

1. A hearing or disciplinary action against an Insured before a state or other licensing board or governmental regulatory body;
2. A civil or criminal proceeding in which the Insured is not a defendant but has been ordered to offer deposition testimony regarding treatment rendered to a patient;
3. A civil or criminal proceeding in which the Insured is not a party but has received a subpoena for record production regarding treatment rendered to a patient; or
4. A HIPAA proceeding.

**E. Legal/Media Expenses** means reasonable fees and costs of attorneys, experts and consultants incurred by the Insured in the investigation and defense of a **Legal Defense Proceeding**. **Legal/Media Expenses** also includes reasonable costs incurred by the Insured in the management of public relations with respect to a **Legal Defense Proceeding**, including reasonable fees and costs of third-party media consultants. Solely with respect to a HIPAA proceeding, **Legal/Media Expenses** shall include civil fines and penalties resulting from any HIPAA proceeding. **Legal/Media Expenses** shall not include any remuneration, salaries, overhead, fees, loss of earning reimbursement or benefit expenses of an Insured.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **VIOLATION OF CONSUMER PROTECTION LAWS EXCLUSION**

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This endorsement modifies insurance provided under the following:

### **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE**

This insurance does not apply to any **Claim** based upon or arising directly, or indirectly, out of any actual or alleged violation of any federal, state or local consumer protection law(s), statute, ordinance or regulation including, but not limited to, the following:

1. The False Claims Act (FCA), including any amendment of or addition to such law;
2. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), including any amendment of or addition to such law;
3. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA);
4. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
5. The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act), including any amendment of or addition to such law;
6. That addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information;
7. Any communication, distribution, publication, sending or transmission via telephone, telephone facsimile machine, computer or other telephonic or electronic devices, including claims asserted under the common law;
8. **Claims** brought by any state or federal government agency, or any person or entity on their behalf, including qui tam **claims**, seeking to enforce any consumer protection law; or
9. Actual or alleged violation of any laws, regulations or guidelines relating to the accessibility of the Insured's website.
10. Any biometric privacy law or any such similar law or statute anywhere in the world that governs or relates to the collection, use, safeguarding, handling, storage, retention or destruction of biometric identifiers, biometric data or biometric information of any kind, including but not limited to retina or iris scans, fingerprints, voiceprints, or scans of hand or face geometry.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 17

**RSUI Group, Inc.**  
945 East Paces Ferry Road, Suite 1800  
Atlanta, GA 30326-1160

**HOME HEALTH CARE, NURSE REGISTRY, INFUSION  
THERAPY OR OTHER MEDICAL STAFFING SUPPLEMENTAL  
APPLICATION**

1. Name of Applicant: \_\_\_\_\_
2. Type of Firm (check all that apply): ☐ Home Health Care ☐ Infusion Therapy ☐ Visiting Nurse Agency  
☐ Nurse Registry ☐ Other Medical Staffing (specify): \_\_\_\_\_
3. Date Established: \_\_\_\_\_
4. Location(s) where services are provided (total must be 100%) \_\_\_\_\_% Home \_\_\_\_\_% Hospice  
\_\_\_\_\_% Nursing Home \_\_\_\_\_% Assisted Living Facility \_\_\_\_\_% Hospital \_\_\_\_\_% Clinic/Doctors Office  
\_\_\_\_\_% Adult Day Care \_\_\_\_\_% Correctional Facility \_\_\_\_\_% Other Facility (specify): \_\_\_\_\_
5. Do you provide any of the following services:  
Pediatric Care? Describe: \_\_\_\_\_ Yes ☐ No ☐  
Pediatric Ventilator/Trach Care? Describe: \_\_\_\_\_ Yes ☐ No ☐  
Live-In Care? Describe: \_\_\_\_\_ Yes ☐ No ☐
6. Employees/Independent Contractors – Annual Staffing:  

<u>Type of Employee/Independent Contractor</u>	<u>No. Full-Time</u>	<u>No. Part-Time</u>	<u>Billable hours Per Year</u>
Employed Registered Nurse	_____	_____	_____
Contracted Registered Nurse	_____	_____	_____
Employed Licensed Practical Nurse	_____	_____	_____
Contracted Licensed Practical Nurse	_____	_____	_____
Employed Certified Nurse Assistant	_____	_____	_____
Contracted Certified Nurse Assistant	_____	_____	_____
Employed Nurse Practitioner/Physician Assistant	_____	_____	_____
Contracted Nurse Practitioner/Physician Assistant	_____	_____	_____
Employed Companion/Home Health Aide	_____	_____	_____
Contracted Companion/Home Health Aide	_____	_____	_____
Employed Social Worker	_____	_____	_____
Contracted Social Worker	_____	_____	_____
Employed Physical Therapist	_____	_____	_____
Contracted Physical Therapist	_____	_____	_____
Employed Other Medical (specify)	_____	_____	_____
Contracted Other Medical (specify)	_____	_____	_____
7. Please provide a copy of the applicant's credentialing procedures and background check procedures.
8. Are drug, alcohol and sexual abuse screening or testing conducted? (Please provide full details) Yes ☐ No ☐



9. Are criminal background checks conducted in all states? (Please provide full details) Yes ☐ No ☐
10. Anticipated payroll amount for the next 12 months: \_\_\_\_\_
11. Does the Applicant warrant that all employed and contracted physicians, surgeons and dentists Yes ☐ No ☐  
maintain their own medical malpractice professional liability insurance coverage and confirm with a certificate of insurance or  
declarations page? If No, please provide details.

### REPRESENTATIONS

I understand that the information submitted herein becomes a part of my professional liability application and is subject to the same warranty and conditions.

Must be signed and dated by an Owner, Partner or Principal as duly authorized on behalf of the Applicant.

---

Signature of the Applicant

Title

Date

**RSUI Group, Inc.**  
945 East Paces Ferry Road, Suite 1800  
Atlanta, GA 30326-1160

**RENEWAL APPLICATION FOR MISCELLANEOUS  
MEDICAL PROFESSIONAL LIABILITY INSURANCE  
(CLAIMS-MADE FORM)**

**General Applicant Information**

1. Name of Applicant: \_\_\_\_\_
2. Any changes in Address? ☐ Yes ☐ No (if yes, please complete the below)  
Principal Address: \_\_\_\_\_
3. City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Website: \_\_\_\_\_

**Applicant Practice**

4. Any change in the applicant's professional activities for which coverage is desired? (if yes, please describe below) ☐ Yes ☐ No  
\_\_\_\_\_
5. Does the Applicant provide any Correctional Medicine Services? ☐ Yes ☐ No
6. In what states is the Applicant registered and licensed to practice? \_\_\_\_\_
7. During the past 12 months, has the applicant acquired or been acquired by another company? ☐ Yes ☐ No  
If yes please describe below  
\_\_\_\_\_
8. State sources and amounts of total revenue:
- | Source                      | Amount Last Policy Year | This Policy Year |
|-----------------------------|-------------------------|------------------|
| a. Charitable Contributions | \$ _____                | \$ _____         |
| b. Government Funding       | \$ _____                | \$ _____         |
| c. Fee for Services         | \$ _____                | \$ _____         |
| d. _____                    | \$ _____                | \$ _____         |
| e. _____                    | \$ _____                | \$ _____         |
| <b>TOTAL GROSS REVENUE:</b> | <b>\$ _____</b>         | <b>\$ _____</b>  |
9. Number of patient encounters last 12 months (\_\_\_\_\_) and/or patient tests carried out (\_\_\_\_).  
(NOTE: "Patient encounters" refers to number of *visits* – not number of patients.)
10. Number of estimated patient encounters the next 12 months (\_\_\_\_\_) and/or patient tests carried out (\_\_\_\_).  
(NOTE: "Patient encounters" refers to number of *visits* – not number of patients.)

11. If applicant has a training school, complete the following.

Specify profession for which students are being trained	Max No. of students per session	No. of sessions per year	% of time involved in clinical setting	Number of students	Qualifications of faculty (eg. MD, RN, PhD)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

12. List the number and type of employees, volunteers or independent contractors, their billable hours, and whether or not they carry individual medical malpractice coverage for their services on behalf of the entity.

	Employees	Volunteers	Independent Contractors	Billable Hours	Insured on own Med Mal Policy
Aestheticians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Chiropractors	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Dieticians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
EMT's	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Laboratory Technicians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse, Aides	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse Anesthetists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurses, Licensed Practical	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse Midwives	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse Practitioner	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse, Registered	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Opticians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Optometrists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Paramedics	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Perfusionists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Pharmacists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Pharmacy Technicians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physical/Occupational/Speech Therapists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physical/Occupational/Speech Therapist Assistants	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physician's Assistants	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physicians – Minor Surgery	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physicians – No Surgery	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Psychologists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Respiratory Therapists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Social Workers	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Other: _____	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No



13. Does the applicant maintain any beds for overnight occupancy? (If yes, total number): \_\_\_\_\_

What is the average length of stay? \_\_\_\_\_

14. Does the Applicant warrant that all employed and contracted physicians, surgeons and dentists maintain their own medical malpractice professional liability insurance coverage and confirm with a certificate of insurance or declarations page? ☐ Yes ☐ No  
If no, please attached explanation.

### Applicant History

15. Is the applicant currently insured under a Commercial General Liability Policy? ☐ Yes ☐ No  
If yes, please give details:

Insurance Company	Type of Coverage	Limits BI	Limits PD	From	To
_____	_____	_____	_____	_____	_____

16. In the past twelve (12) months, has any professional liability claim or suit been made against the Applicant or any of its predecessor firms? Please complete the **Claim Supplement** and provide currently valued company loss runs ☐ Yes ☐ No  
If "Yes", how many? \_\_\_\_\_

17. Have all matters in Question 15. been reported to RSUI or to the Applicant's former or current insurer(s) or to the former Insurer of any predecessor firm or former insurer of a current member of the Firm? ☐ Yes ☐ No

18. Has any principal, owner, partner or employee for whom coverage is sought been the subject of a disciplinary complaint made to any court, administrative agency or regulatory body? (If "yes", provide full details and documentation) ☐ Yes ☐ No

### Representations

The Applicant declares that the above statement and representations are true and correct, and that no facts have been suppressed or misstated. All written statements and materials furnished to the Company, in conjunction with this application will be incorporated by reference into this application and made part hereof.

This application does not bind the Applicant to buy, or the Company to issue the insurance, but it is agreed that this form shall be the basis of the contract should a policy be issued, and it will be attached to and made part of the policy. The undersigned Applicant declares that if the information supplied on this application changes between the dates of this application and the time when the policy is issued, the Applicant will immediately notify the company of such changes, and the Company may withdraw or modify any outstanding quotations and/or authorization or agreement to bind the insurance.

\_\_\_\_\_  
Signature of the Insured, Owner, Partner or Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Producer

Your policy has been signed on our behalf by our President and by our Secretary. However, your policy will not be binding on us unless it is also countersigned by one of our duly authorized agents.

A handwritten signature in black ink, appearing to read "Andrew J. Whittington". The signature is fluid and cursive, with a large, stylized "W" at the end.

President

**RSUI Indemnity Company**  
**Landmark American Insurance Company**  
**Covington Specialty Insurance Company**

A handwritten signature in black ink, appearing to read "Ronald T. Hule". The signature is cursive and somewhat stylized, with a long horizontal line extending from the end.

Secretary

**RSUI Indemnity Company**  
**Landmark American Insurance Company**  
**Covington Specialty Insurance Company**



*A member of Alleghany Insurance Holdings LLC*

# EXHIBIT D



## Wilson, Zach

**From:** David Shelly <dshelly@nurseselectstaffing.com>  
**Sent:** Wednesday, September 13, 2023 4:10:23 PM  
**To:** Wilson, Zach <zwilson@rsui.com>;Anthony Viola <anthonyviola@libertyins.com>  
**Cc:** Steve Pcsolar <stevepcsolar@libertyins.com>  
**Subject:** Re: Claim # 7030187058 Nurse Select Staffing

Hi Zach,

The email was only discovered after receiving the complaint yesterday - during a search of the employee's name to pull all email correspondences together. The email was previously unread.

Sincerely,

David Shelly, President  
NurSelect, LLC  
1829 New Holland Road  
Suite 13  
Reading, PA 19607  
Tel. (800) 484-8572  
Fax (484) 214-0055  
www.nurseselectstaffing.com



Disclaimer: The information contained in this communication from the sender is confidential. It is intended solely for use by the recipient and others authorized to receive it. If you are not the recipient, you are hereby notified that any disclosure, copying, distribution or taking action in relation of the contents of this information is strictly prohibited and may be unlawful.

**From:** Wilson, Zach <zwilson@rsui.com>

**Sent:** Wednesday, September 13, 2023 3:57 PM

**To:** David Shelly <dshelly@nurselectstaffing.com>; Anthony Viola <anthonyviola@libertyins.com>

**Cc:** Steve Pcsolar <stevepcsolar@libertyins.com>

**Subject:** RE: Claim # 7030187058 Nurse Select Staffing

Thank you David.

I see that the mailing address on the 1/12/23 letter is incorrect, but your email address appears correct. Was it sent to your email at that time? Is there a particular reason it was not discovered until yesterday?

Zach Wilson  
Chief Claims Specialist  
Professional Liability Claims  
RSUI Group, Inc.

M: 470-487-6009

[zwilson@rsui.com](mailto:zwilson@rsui.com)

---

**From:** David Shelly <dshelly@nurselectstaffing.com>  
**Sent:** Wednesday, September 13, 2023 1:39 PM  
**To:** Wilson, Zach <zwilson@rsui.com>; Anthony Viola <anthonyviola@libertyins.com>  
**Cc:** Steve Pcsolar <stevepcsolar@libertyins.com>  
**Subject:** Re: Claim # 7030187058 Nurse Select Staffing

Hi Zach,

The complaint was served yesterday, September 12, 2023 around 10:30am. On the back of the complaint there is a date of 8/25/23 that says "writ re-issued" by the prothonotary and a date of 8/28/23 when it was received by the Sheriff Dept. of Lancaster County.

Ayanna McDowell was employed by NurSelect as a W2 employee at the time of the incident. She was terminated from our employment September of 2021 as a result of excessive absenteeism.

Prior communications were as follows:

October 14, 2022 - received a phone call from Kimberly Selemba (Saxton Stump) requesting Ayanna's contact information. (Provided this to her via email)

October 14, 2022 - received email requesting Ayanna's statement regarding the incident (provided this to her via email).

They appear to have had the wrong mailing address for the notice of pending joinder dated Jan. 12, 2023. This was only discovered in my email after we received the official complaint yesterday.

I will send the above mentioned written correspondences in a separate email. Please let me know if you need anything else.

Sincerely,

David Shelly, President  
NurSelect, LLC  
1829 New Holland Road  
Suite 13  
Reading, PA 19607  
Tel. (800) 484-8572  
Fax (484) 214-0055  
[www.nurselectstaffing.com](http://www.nurselectstaffing.com)

# EXHIBIT E





300 SUMMIT LAKE DRIVE, VALHALLA, NY 10595  
TEL: 914.494.7000 FAX: 914.494.7100 WWW.KBRLAW.COM

October 4, 2023

JOAN M. GILBRIDE  
DIRECT: 212.994.6517  
JGILBRIDE@KBRLAW.COM

BRIANA A. SEMENZA  
DIRECT: 914.449.1011  
BSEMENTA@KBRLAW.COM

VIA EMAIL ONLY

David Shelly  
NurSelect LLC  
1829 New Holland Road, Suite 13  
Reading, Pa 19607  
dshelly@nursesselectstaffing.com

Re:	Named Insured	:	NurSelect LLC
	Matter	:	<i>Estate of Geraldine E. Wiggins</i>
	Policy No.	:	LHC801468 (March 1, 2023 to March 1, 2024)
	RSUI File No.	:	7030187058
	KBR File No.	:	810.750

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Dear Mr. Shelly:

This firm has been retained to advise and assist RSUI Indemnity Company ("RSUI"), which is the authorized representative on behalf of Landmark American Insurance Company ("Landmark"). Landmark issued the above referenced Professional Liability Policy to NurSelect LLC ("NurSelect").

We are directing this letter to your attention as the representative of all Insureds under the captioned Policy with respect to insurance coverage matters. If you are not acting on behalf of the Insureds, please direct a copy of this letter to the appropriate party and advise us immediately of that party's identity. Please direct all future communications intended for Landmark with respect to coverage for these matters to the undersigned.

Landmark further acknowledges receipt of the above referenced third party complaint filed on June 13, 2023, in the Pennsylvania Court of Common Pleas, Lancaster County. The purpose of this letter is to explain the operation of the captioned policy in connection with this matter. As detailed below, and based on the information currently available to it, Landmark has determined that coverage is not available. The basis for Landmark's conclusion is detailed in this letter. To the extent the Insureds have additional information Landmark should consider, Landmark is willing to reevaluate its coverage determination.

NurSelect LLC  
Page 2

Please be aware that nothing in this letter is intended to waive any rights Landmark may have under the Landmark Policy, at law or in equity, all of which are expressly reserved. If you have any questions about anything in this letter, we would be more than happy to respond to those questions to the best of our ability.

### THE SUBMITTED MATTER

On January 12, 2023, counsel to Brethren Village Retirement Community sent a letter to NurSelect, LLC (via email and mail), advising that Brethren Village has been sued in the Court of Common Pleas related to the care and treatment of one of its residents, Geraldine Wiggins (the "Attorney Letter"). The Attorney Letter advises that Brethren Village is being sued for negligence arising out of a fall sustained by Ms. Wiggins on May 12, 2021, and that Brethren Village's investigation revealed that Ayanna McDowell, CNA, who was employed by NurSelect at the relevant time, had direct involvement in Ms. Wiggins' alleged fall. The Attorney Letter discusses the "Staffing Agreement" between Brethren Village and NurSelect, with specific reference to the agreement provision for "Apportionment of Liability and Damages Indemnification," which states:

5.1 Apportionment of Liability. It is hereby stipulated and agreed between the [Brethren Village] and NurSelect that with respect to any claim or action arising out of the Services, each entity shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements or judgments resulting from negligence, actions or omissions of its own agents, officers, and employees.

The Attorney Letter advises that based upon the foregoing provision, Brethren Village will be filing a joinder complaint against NurSelect to invoke NurSelect's contractual agreement to indemnify Brethren Village for the alleged negligence, actions, or omissions of Ms. McDowell related to the care and treatment of Ms. Wiggins. The Attorney Letter also advises NurSelect to provide notice of the pending joinder against NurSelect to its liability insurance provider so that counsel can be assigned to represent NurSelect's interests.

It is Landmark's understanding that NurSelect received the Attorney Letter via email on January 12, 2023.

On June 13, 2023, a joinder complaint was filed against NurSelect in the Pennsylvania Court of Common Pleas in Lancaster County, captioned *Brenda L. King, individually and as Administratrix of the Estate of Geraldine E. Wiggins, v. Rehabilitation Center at Brethren Village, LLC, Brethren Village, Brethren Village Realty, LLC, Lori Schoener, NHA, and John Does 1-4 v. NurSelect, LLC*, Case No. CI-22-04128 (the "Joinder Complaint").<sup>1</sup> The Joinder Complaint alleges the following three causes of action: (1) negligence, indemnification and contribution; (2) vicarious liability, indemnification, and contribution; and (3) contractual indemnification. The Joinder Complaint alleges that NurSelect is liable for common law and contractual indemnification and/or contribution, vicariously liable to Ms. Wiggins' estate, jointly and severally liable with Brethren Village, and liable over Brethren Village for claims asserted by Ms. Wiggins' estate and for injuries and damages alleged in originating complaint. The Joinder complaint also asserts that pursuant to the supplemental staffing agreement, NurSelect is contractually

<sup>1</sup> The fourth amended complaint (pre-joinder) alleges that Decedent Wiggins died on August 28, 2021, and that defendant Brethren Village acted negligently through its agents in the care and treatment of Ms. Wiggins beginning on April 13, 2021. On May 12, 2021, Ms. Wiggins was left alone despite the plan of care requiring assistance and records, and obtained a head injury when she fell, which allegedly led to her death.

NurSelect LLC  
Page 3

obligated to indemnify and hold harmless Brethren Village for any liabilities, damages, and expenses resulting from the claims asserted by Ms. Wiggins' Estate.

It is Landmark's understanding that NurSelect was served with the Joinder Complaint and reported the Joinder Complaint to Landmark on September 12, 2023.

### THE POLICY

Landmark issued its Professional Liability Policy No. LHC801468 to NurSelect LLC reflecting a Policy Period of March 1, 2023 to March 1, 2024 (the "Policy"). The Policy's General Liability Coverage Part is subject to a \$1 million Limit of Liability per Claim and \$3 million in the aggregate. The Policy's Commercial General Liability Coverage Part is subject to a \$1 million Limit of Liability per Occurrence and \$3 million in the aggregate.

Pursuant to the Cross Coverage Exclusion Endorsement, the Policy only affords coverage under either the General Liability Coverage part or the Professional Liability Coverage part, not both.

### COVERAGE DETERMINATION

#### *Medical Professional Liability Coverage*

Part 1 of the Medical Professional Liability Coverage part provides the following:

The Company will pay on behalf of the Insured, as shown in the Declarations, all sums that the Insured becomes legally obligated to pay as **Damages** and associated **Claim Expenses** arising out of a negligent act, error or omission, even if the **Claim** asserted is groundless, false or fraudulent, in the rendering of or failure to render professional services as described in the Business Description on the Declarations, provided that the:

1. **Claim** is first made against the Insured during the **Policy Period**, and reported to the Company no later than sixty (60) days after the end of the **Policy Period**;
2. Negligent act, error or omission took place in a covered territory;
3. Negligent act, error or omission took place after the **Retroactive Date** as shown in the Declarations.

Section III.C. of Medical Professional Liability Coverage part defines Claim to include a "Claim means a written demand for monetary or non-monetary relief received by the Insured during the Policy Period, including the service of suit, or the institution of an arbitration proceeding." The Attorney Letter qualifies as a Claim since the Attorney Letter states that Brethren Village intends to name the insured as a defendant in the suit, are seeking contractual indemnity (relief) and request NurSelect notify its insurance carrier. It is Landmark's understanding and Mr. Shelly has acknowledged that he received the Attorney Letter on January 12, 2023, via email, but he did not open the email. The Medical Professional Liability Coverage part requires that Claims be first made against the Insured during the March 1, 2023 to March 1, 2024 Policy Period. The Attorney Letter is a Claim made against the Insured that was first made on January 12, 2023, 48 days before the inception of the Policy Period, as it was received by the Insured on January 12, 2023.

Pursuant to Section C. of the Medical Professional Liability Coverage part, all "Claims arising out of a single negligent act, error or omission, or a series of related negligent acts, errors or omissions by one or more Insureds shall be treated as a single Claim for all purposes of this

NurSelect LLC  
Page 4

policy.” Section C also provides that all “Claims shall be deemed first made when the earliest of such Claims is first made, regardless of whether such date is before or during the Policy Period.” The Joinder Complaint and the Attorney letter arise out of the same exact facts and allegations – the contractual indemnification and vicarious liability of NurSelect arising out of Ms. Wiggins’ fall at Brethren Village. Accordingly, the Joinder Complaint and the Attorney Letter are a single Claim first made on January 12, 2023.<sup>2</sup> As such, coverage for the Submitted Matter is denied as a Claim first made prior to the inception of the Policy Period, failing to trigger the applicable Insuring Agreement.

The Professional Liability Coverage excludes coverage for any Claim or Claim Expenses based upon or arising out of:

Any obligation or liability assumed by the Insured under any contract or any oral or written agreement, unless liability would have attached in the absence of such a contract or agreement, including the Insured’s decision to unilaterally terminate or otherwise alter, remove or abridge any rights, benefits or obligations under any contract or agreement.

This exclusion also acts to wholly exclude coverage for the Submitted Matter based on the contract NurSelect has with Brethren Village.

Moreover, the Professional Liability Coverage part includes a Notice of Claim general condition that provides:

The Insured must notify the Company as soon as practicable of an incident, occurrence or offense that may reasonably be expected to result in a **Claim**. Where notice to the Company of such incidents, occurrences or offenses has been acknowledged as adequate by the Company in writing, subsequent **Claims** derived from such incidents, occurrences or offenses will be deemed as first made at the time the incident, occurrence or offense giving rise to such **Claim** was first provided. The Insured also must immediately send copies to the Company of any demands, notices, summonses or legal papers received in connection with any **Claim**, and must authorize the Company to obtain records and other information.

It is Landmark’s understanding that NurSelect was aware of the incident involving Ms. Wiggins as early as October 14, 2022, when Brethren Village’s counsel requested Ayanna McDowell’s contact information and requested Ms. McDowell’s statement regarding the incident. NurSelect failed to notify Landmark as soon as practicable of the incident (in October 2022), and failed to immediately send a copy of the January 12, 2023 Attorney Letter to Landmark. As such, NurSelect failed to fulfill the foregoing condition of the Policy, resulting in another basis for a denial of coverage for the Submitted Matter.

#### *Commercial General Liability Coverage*

The General Liability Coverage A Insuring Agreement provides:

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured

<sup>2</sup> The Attorney Letter and the Joinder Complaint will collectively be referred to herein as the “Submitted Matter”.



NurSelect LLC  
Page 5

against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle or defend any "claim" or "suit" that may result. But:

1. The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
2. Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

Section 2. of the Commercial General Liability coverage part provides the following, in relevant part:

This Insurance does not apply to:

\* \* \*

**v. Prior Knowledge**

Any alleged act, error, omission, or circumstance likely to give rise to a "claim" that an Insured had knowledge of prior to the effective date of this policy. This exclusion includes, but is not limited to any prior "claim" or possible "claim" referenced in the Insured's application.

Based on NurSelect's own admission, NurSelect was aware on October 14, 2022, of the "Occurrence" that occurred with Ms. Wiggins as it involved Ayanna McDowell (NurSelect's employee) because Ayanna McDowell's statement was requested, so NurSelect had prior knowledge of the incident and this possible claim. NurSelect also had prior knowledge of a "claim" when it received the January 12, 2023 Attorney Letter. Accordingly, coverage is wholly excluded under the Commercial General Liability part of the Policy based on the prior knowledge exclusion.

Section IV.2. of the Commercial General Liability conditions provides that in the event of occurrence, offense, claim or suit, the insured:

- a. [ ] must see to it that we are notified as soon as practicable of an "occurrence" or offense which may result in a "claim". To the extent possible, notice should include:
  1. How, when and where the "occurrence" or offense took place;
  2. The names and addresses of any injured persons and witnesses; and
  3. The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a "claim" is made or "suit" is brought against any insured, you must:
  1. Immediately record the specifics of the "claim" or "suit" and the date received; and
  2. Notify us as soon as practicable.

You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.
- c. You and any other involved insured must:
  1. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or a "suit";.....

NurSelect failed to comply with its duties under Section IV.2. of the Commercial General Liability part of the Policy when it failed to immediately send Landmark a copy of the January 12, 2023 Attorney Letter, which provided notice of a "claim". It also appears that NurSelect should have advised Landmark of the occurrence, when it first learned of it on October 14, 2022. As such, coverage is denied under the Commercial General Liability Coverage part of the Policy.

NurSelect LLC  
Page 6

Section 2.b. of the Commercial General Liability Coverage part exclusions provides the following:

This Insurance does not apply to:

\* \* \*

**b. Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- a. That the insured would have in the absence of the contract or agreement; or
- b. Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - a. Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - b. Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

Landmark reserves its rights to further exclude coverage based on the contractual indemnity exclusion in light of the "Staffing Agreement" entered into between NurSelect and Brethren Village.

Landmark also notes that NurSelect signed a Policy application on January 26, 2023, and checked no in response to the following question: "In the past twelve (12) months, has any professional liability claim or suit been made against the Applicant or any of its predecessor firms?". The application contains the following representations clause:

The Applicant declares that the above statement and representations are true and correct, and that no facts have been suppressed or misstated. All written statements and materials furnished to the Company, in conjunction with this application will be incorporated by reference into this application and made part hereof...is agreed that this form shall be the basis of the contract should a policy be issued, and it will be attached to and made part of the policy.

At the time NurSelect signed the application on January 26, 2023, NurSelect knew about the Ms. Wiggins' incident and received the January 12, 2023 letter. Accordingly, it appears the application may have contained a misrepresentation. Landmark expressly reserves its rights in this regard.

**CONCLUSION**

In conclusion, the Policy does not afford coverage for the captioned matter. Landmark remains willing to reconsider its denial of coverage for this matter if warranted by additional information provided by the Insured. If nothing further is received by Landmark from the Insured in the next thirty days, Landmark will presume the Insured accept this coverage determination and Landmark will close its file.

NurSelect LLC  
Page 7

This letter is not intended to be an exhaustive recitation of all potentially applicable terms, conditions, exclusions or endorsements of the Policy. Nothing in this letter is intended to, or does, waive any of Landmark's rights, privileges or defenses under the Policy, at law or in equity, all of which are expressly reserved. Landmark expressly reserves the right to alter, supplement, and modify this coverage statement as other and additional information may become available. Landmark's coverage determination is necessarily based upon information that has been made available to it at this point. If you have any other information that Landmark should consider, please let us know.

If you have any questions, please feel free to contact us.

Very truly yours,

KAUFMAN BORGEESE & RYAN LLP



Joan Gilbride  
Briana Semenza

cc: (via email only)

zwilson@rsui.com

KAUFMAN BORGEESE & RYAN LLP

9402374

# EXHIBIT 2



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
CIVIL DIVISION**

**LANDMARK AMERICAN  
INSURANCE COMPANY,**

**Civil Action No. 5:24-CV-01412**

**PLAINTIFF,**

**v.**

**NURSELECT, LLC.,**

**Electronically Filed**

**DEFENDANT.**

**DEFENDANT'S ANSWER WITH AFFIRMATIVE  
DEFENSES TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

AND NOW, comes Defendant, Nurseselect, LLC, by and through its counsel, Dickie, McCamey & Chilcote, P.C., by Bryon R. Kaster, Esquire, and responds to the corresponding paragraphs of Plaintiff's First Amended Complaint as follows:

1. The allegations set forth in this paragraph are a conclusion of law to which no response is required.
2. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation.
3. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation.
4. The allegations contained herein are admitted.

5. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation relating to the jurisdiction of this Court.

6. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation relating to the proper venue.

7. Plaintiff initiated this lawsuit, so Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation concerning what “[t]his action involves....”

8. The allegations set forth herein refer to allegations set forth in the Complaint filed in the Underlying Action, which is a document that speaks for itself.

9. It is specifically denied that Defendant “received” the referenced letter. As for the allegations regarding how the letter was “sent”, Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegations. While this paragraph includes references to a letter and agreement, which are documents that speak for themselves, because Defendant did not receive the letter on January 12, 2023, Defendant denies that it advised Defendant as alleged.

10. While this paragraph includes references to a letter, which is a document that speak for itself, because Defendant did not receive the letter on January 12, 2023, Defendant denies that it “advises” Defendant as alleged.

11. This paragraph includes references to a document that speak for itself. By way of further response, the allegations are admitted.

12. This paragraph includes references to a document that speak for itself. By way of further response, the allegations are admitted.

13. This paragraph includes references to a document that speak for itself. By way of further response, the allegations are admitted.

14. This paragraph includes references to a document that speak for itself. By way of further response, the allegations are admitted.

15. This paragraph includes references to a document that speak for itself. By way of further response, the allegations are admitted.

16. This paragraph includes references to a document that speak for itself. By way of further response, the allegations are admitted.

17. It is admitted that Defendant provided Landmark with notice of the Underlying Action on or about September 12, 2023.

18. It is admitted that Defendant reported the Attorney Letter to Landmark on or about September 12, 2023.

19. This paragraph includes references an e-mail communication that speak for itself. By way of further response, the allegations are denied. It is specifically denied that it was “acknowledged” that “the Attorney Letter was received by e-mail.” The September 13, 2023 e-mail communication states: “The

email was only discovered after receiving the complaint yesterday – during a search of the employee’s name to pull all email correspondences together. The email was previously unread.”

20. This paragraph includes references a letter, which is a document that speak for itself.

21. This paragraph includes references letters, which are documents that speak for themselves.

### **COUNT I – DECLARATORY JUDGMENT**

22. Defendant hereby restates and incorporates all of its responses to the preceding allegations as though set forth more fully herein at length.

23. This paragraph includes references to a document that speak for itself. By way of further response, the allegations are admitted.

24. This paragraph includes references to a document that speak for itself. By way of further response, the allegations are admitted.

25. Denied. It is specifically denied that the letter constitutes a “Claim.” It is specifically denied that the letter was received by Defendant, as the mailing address on the letter was incorrect and the e-mail was not received by Defendant until September 12, 2023, after Defendant received the complaint the Underlying Action.



26. Denied. It is specifically denied that the letter was “indisputably received” by Defendant on January 12, 2023, as the mailing address on the letter was incorrect and the e-mail was not received by Defendant until September 12, 2023, after Defendant received the complaint the Underlying Action.

27. Denied. The allegations are specifically denied.

28. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation relating to Landmark’s request for relief. However, Defendant respectfully requests that this Honorable Court determine and declare, pursuant to the Policy, that Landmark does owe Defendant a duty of defense and indemnity in the Underlying Action.

## **COUNT II – DECLARATORY JUDGMENT**

29. Defendant hereby restates and incorporates all of its responses to the preceding allegations as though set forth more fully herein at length.

30. This paragraph includes references to a document that speak for itself. By way of further response, the allegations are admitted.

31. While this paragraph includes references to a letter, which is a document that speak for itself, because Defendant did not receive the letter on January 12, 2023, Defendant denies that it “advised” Defendant as alleged.

32. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation relating to why the Underlying Action was filed.

33. Denied. By way of further response, the “Underlying Action” has been defined in the Complaint at paragraph 7 as the lawsuit filed by Brenda L King that is pending in state court to which Defendant has been joined. The pleadings in that case; i.e., the Underlying Action, include many assertions that are not fairly summarized in this paragraph of the Complaint and, thus, the allegations set forth herein are specifically denied.

34. Denied. It is specifically denied that the Policy’s contract exclusion “wholly excludes coverage for the Underlying Action....”

35. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation relating to Landmark’s request for relief. However, Defendant respectfully requests that this Honorable Court determine and declare, pursuant to the Policy, that Landmark does owe Defendant a duty of defense and indemnity in the Underlying Action.

### **COUNT III – DECLARATORY JUDGMENT**

36. Defendant hereby restates and incorporates all of its responses to the preceding allegations as though set forth more fully herein at length.

37. This paragraph includes references to a document that speak for itself. By way of further response, the allegations are admitted.

38. Denied as stated. It is admitted only that Defendant was contacted on October 14, 2022 by an attorney requesting Ms. McDowell’s statement, as well as

Ms. McDowell's contact information. By way of further response, Ms. McDowell's employment had been terminated as of September of 2021.

39. It is specifically denied that Defendant "received the Attorney Letter" on January 12, 2023.

40. Denied. It is specifically denied that Defendant "failed to notify Landmark as soon as practicable of the incident." It is specifically denied that Defendant "failed to immediately send a copy of the January 12, 2023 Attorney letter to Landmark."

41. Denied. It is specifically denied that Defendant "failed to fulfill a condition precedent of coverage under the Policy."

42. Defendant lacks knowledge or information sufficient to form a belief about the truth of the allegation relating to Landmark's request for relief. However, Defendant respectfully requests that this Honorable Court determine and declare, pursuant to the Policy, that Landmark does owe Defendant a duty of defense and indemnity in the Underlying Action.

WHEREFORE, Defendant, NurSelect LLC, respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff.

### **AFFIRMATIVE DEFENSES**

1. Defendant hereby restates and incorporates all of its responses to the preceding allegations as though set forth more fully herein at length.

2. Defendant hereby asserts estoppel as an affirmative defense.

3. Defendant hereby asserts waiver as an affirmative defense.

4. Defendant hereby asserts the clear and unambiguous terms of the referenced policy of insurance as a defense.

5. Plaintiff's claims are based upon a faulty interpretation of Pennsylvania law.

6. Defendant provided timely notice of any and all claims.

7. Defendant satisfied any and all duties and obligations owed by Defendant to Plaintiff under the applicable policy of insurance and under the applicable law.

8. Plaintiff owes Defendant a duty of defense and indemnity, as well as any and all additional relief as this Honorable Court may deem proper.

WHEREFORE, Defendant, NurSelect LLC, respectfully requests that this Honorable Court enter judgment in its favor and against Plaintiff.



Respectfully submitted,

**DICKIE, McCAMEY & CHILCOTE, P.C.**

Date: June 28, 2024

By: /s/ Bryon R. Kaster

Bryon R. Kaster  
Attorney I.D. No. 91707  
300 Corporate Center Drive  
Suite 103-D  
Camp Hill, PA 17011-9927  
717-731-4800  
[BKaster@dmclaw.com](mailto:BKaster@dmclaw.com)  
*Attorney for Defendant, Nurselect, LLC*

**CERTIFICATE OF SERVICE**

AND NOW, this 28<sup>th</sup> day of June, 2024, I, Bryon R. Kaster, hereby certify that the foregoing *~~Answer with Affirmative Defenses to Plaintiff's Amended Complaint~~* has been electronically filed and is available for viewing and downloading from the ECF system by the undersigned counsel of record. Accordingly, service has been effectuated pursuant to I.R.5.7.

Date: June 28, 2024

By: /s/ Bryon R. Kaster

# EXHIBIT 3



## ***Professional Liability Insurance***

### **CLAIM OFFICE:**

**Mail claims to:**  
945 E. Paces Ferry Rd.  
Suite 1800  
Atlanta, GA 30326-1160

**Fax claims to:**  
(404) 231-3755  
(Attn: Claims Department)

**Email claims to:**  
[reportclaims@rsui.com](mailto:reportclaims@rsui.com)





## COMMERCIAL LINES COMBINATION POLICY DECLARATIONS

## Landmark American Insurance Company

(A New Hampshire Stock Co.)  
(hereinafter called "the Company")

EXECUTIVE OFFICES: 945 East Paces Ferry Road, Suite 1800, Atlanta, GA 30326-1160

Policy Number: LHC801468

RENEWAL OF: LHC794794 00

Named Insured and Mailing Address:

Producer Name:

NURSELECT LLC  
1829 NEW HOLLAND ROAD  
SUITE 13  
READING, PA 19607

Policy Period: From: 3/1/2023 To: 3/1/2024 12:01 A.M. Standard Time at the Named Insured address as stated herein.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

Business Description: ALLIED HEALTHCARE STAFFING AGENCY

## COVERAGE PARTS

## PREMIUM

## Commercial General Liability

COMMERCIAL GENERAL LIABILITY COVERAGE FORM -  
OCCURRENCE

\$ Included

## Professional Liability

MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS  
MADE AND REPORTED BASIS - BROAD

\$ Included

Total Advance Policy Premium

\$

Minimum Earned Premium

\$

Not Subject to Audit

Forms and Endorsements made a part of this policy at time of issue: Please see SCHEDULE OF ATTACHMENTS.

(Omits applicable forms and endorsements if shown in specific Coverage Form Declarations.)

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY

March 08, 2023

Date

By:

Authorized Representative

Declarations Page 1 of 2

SubIdID#:

585559

BinderID#

Created By:

JML

RSG 50011 1020

Page 1 of 2

**DECLARATIONS****Policy Number:** LHC801468**Effective Date:** 3/1/2023  
At 12:01 A.M. Standard Time**LIMITS OF INSURANCE:****CGL and Professional Liability:**\$ See Aggregate Limits Below Policy Aggregate Limit**Commercial General Liability:**\$ 3,000,000 General Aggregate Limit (Other than Products-Completed Operations)\$ 3,000,000 Products-Completed Operations Aggregate Limit\$ 1,000,000 Personal and Advertising Injury Limit\$ 1,000,000 Each Occurrence\$ 5,000 Medical Payments (Any One Person)\$ 50,000 Damage to Premises Rented to You**Professional Liability:**\$ 1,000,000 Each Claim\$ 3,000,000 Aggregate**DEDUCTIBLE:** \$ 2,500 Each Claim

<b>RETROACTIVE DATE:</b>	Coverage	Date
	Commercial General Liability	N/A
	Professional Liability	3/1/2020

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THESE DECLARATIONS ARE PART OF THE COMMON POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

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**NOTICE:**

This is a claims-made and reported policy. Please read the policy carefully and discuss the coverage afforded by the policy with your insurance agent or broker.

**LANDMARK AMERICAN INSURANCE COMPANY**Policy Number: LHC801468Insurer: Landmark American Insurance CompanyNamed Insured: NURSELECT LLC**NOTICE - DISCLOSURE OF TERRORISM PREMIUM**

This Coverage Part/Policy covers certain losses caused by terrorism. In accordance with the federal Terrorism Risk Insurance Act, as amended, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to the coverage for terrorist acts certified under the Terrorism Risk Insurance Act.

As defined in Section 102(1) of the Act: The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury – in consultation with the Secretary of Homeland Security, and the Attorney General of the United States – to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

**DISCLOSURE OF PREMIUM**

The portion of your premium for the policy term attributable to coverage for terrorist acts certified under the Act is  
\$ 0.00 .

In any case, if the insured rejects terrorism coverage in any scheduled underlying policy, this policy is written to exclude terrorism.

**DISCLOSURE OF FEDERAL PARTICIPATION IN PAYMENT OF TERRORISM LOSSES**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 80% of that portion of the amount of such insured losses that exceeds the applicable **Insurer** retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

**CAP INSURER PARTICIPATION IN PAYMENT OF TERRORISM LOSSES**

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we will not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

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**SCHEDULE OF POLICY ATTACHMENTS AND FORMS**

<u>Form Number</u>	<u>Form Title</u>
RSG 99054 0121	Notice - Disclosure of Terrorism Premium
RSG 51039 1017	Commercial General Liability Coverage Form - Occurrence
RSG 51044 0722	Medical Professional Liability Coverage Part Claims Made and Reported Basis - Broad
RSG 51031 0522	Common Policy Conditions
ENDT-01	Additional Insured Endorsement (Blanket) - RSG 55015 0418
ENDT-02	Communicable Disease Exclusion (CGL only) - RSG 56201 0920
ENDT-03	Cross Coverage Exclusion - Medical - Broad - RSG 56136 0319
ENDT-04	Cryptocurrency Exclusion - RSG 56216 0822
ENDT-05	Deductible Liability Insurance-Comb. Policy-Multiple Ded - RSG 94016 0916
ENDT-06	Exclusion - Correctional Medicine - RSG 56203 0321
ENDT-07	Exclusion - Designated Professional Services - RSG 56114 1118
ENDT-08	Hired and Non - owned Auto Liability
ENDT-09	Minimum Retained Premium - RSG 54025 0405
ENDT-10	Nuclear Energy Liability Exclusion - RSG 56058 0903
ENDT-11	Opioid and Controlled Substance Exclusion - RSG 56191 0421
ENDT-12	Pennsylvania - Notice of Cancellation & Nonrenewal - RSG 53015 0903
ENDT-13	Pennsylvania Surplus Lines Disclosure Notice - RSG 99091 0106
ENDT-14	Service Of Suit - RSG 94022 0407
ENDT-15	State Fraud Statement - RSG 99022 1022
ENDT-16	Supplementary Coverages Endorsement (Broad) - RSG 54207 1022
ENDT-17	Violation of Consumer Protection Laws Exclusion - RSG 56121 0822

**Policy No.:** LHC801468

RSG 54081 0710



## LANDMARK AMERICAN INSURANCE COMPANY

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is an Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

**SECTION I – COVERAGES****COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY****1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle or defend any "claim" or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or "claim", knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or "claim", includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or "claim":

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

- (2) Receives a written or verbal demand or "claim" for damages because of the "bodily injury" or "property damage"; or
  - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

**d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and

(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:

(i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use by the building's occupants or their guests;

(ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or

(iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:

(i) Any insured; or

(ii) Any person or organization for whom you may be legally responsible;

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
  - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
  - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) "Claim" or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such "claim" or "suit" by or on behalf of a governmental authority.

**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:



(a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or

(b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".

**h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

**i. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**j. Damage To Property**

"Property damage" to:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs **(1)**, **(3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section **III – Limits Of Insurance**.

Paragraph **(2)** of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs **(3)**, **(4)**, **(5)** and **(6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph **(6)** of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**k. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**l. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**q. Asbestos**

"Bodily injury" or "property damage" for past, present or future claims arising in whole or in part either directly or indirectly, out of the manufacture, distribution, sale, re-sale, re-branding, installation, repair, removal, encapsulation, abatement, disposal of, replacement or handling of, exposure to, testing for or failure to disclose the presence of, asbestos or products containing asbestos whether or not the asbestos is or was at any time airborne as a fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this insurance does not apply to "bodily injury" or "property damage" including expenses for;

- (1) The costs of clean up or removal of asbestos or products and materials containing asbestos;
- (2) The cost of such actions as may be necessary to monitor, assess and evaluate the release or threat of asbestos or products and material containing asbestos;
- (3) The cost of disposal of asbestos substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result; or
- (4) The cost of compliance with any law or regulation regarding asbestos.

**r. Biological Contaminants**

Any "claim" arising out of a "biological contaminant".

"Biological contaminant" means any biological irritant or contaminant including but not limited to any form of mold, mildew, mushroom, yeast, fungus, bacteria, virus, insect, allergen and any other type of biological agent, including any substance produced by, emanating from, or arising out of such "biological contaminant".

**s. Employment Practices**

Any "claim" arising out of or in any way related to:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, performance evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment related practices, procedures, policies, acts or omissions; or
- (4) Consequential "bodily injury" or "personal and advertising injury" as a result of (1) through (3) above.

This exclusion applies whether the Insured may be held liable as an employer or in any other capacity and to any obligation to share "damages" with or to repay someone else who must pay "damages" because of the injury.

It is further agreed that no coverage shall apply under this policy to any "claim" brought by or against any spouse, child, parent, brother or sister of the Insured or any other person.

The Company shall not have a duty to defend any "claim", "suit", arbitration or any other form of a trial court proceeding.

**t. Lead**

"Bodily injury" or "property damage" for past, present or future claims arising in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, re-branding, installation, repair, removal, encapsulation, abatement, disposal of, replacement or handling of, exposure to, ingestion of or testing for, lead or products containing lead whether or not the lead is or was at any time airborne as a particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this insurance does not apply to "bodily injury" or "property damage" including expenses for:

- (1) The costs of clean up or removal of lead or products and materials containing lead;
- (2) The cost of such actions as may be necessary to monitor, assess and evaluate the release or threat of same, of lead or products and material containing lead;
- (3) The cost of disposal of lead substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result; or
- (4) The cost of compliance with any law or regulation regarding lead.

**u. Sexual Abuse**

Any "claims" involving the use of excessive influence or power on any individual, or the actual or alleged inappropriate physical contact or contact that is deemed by or alleged by the individual to be sexual or in any way unwelcome.

**v. Prior Knowledge**

Any alleged act, error, omission, or circumstance likely to give rise to a "claim" that an Insured had knowledge of prior to the effective date of this policy. This exclusion includes, but is not limited to any prior "claim" or possible "claim" referenced in the Insured's application.

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section **III – Limits Of Insurance**.

## **COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY**

### **1. Insuring Agreement**

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle or defend any "claim" or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **III – Limits Of Insurance**; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

- b.** This insurance applies to "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

### **2. Exclusions**

This insurance does not apply to:

**a. Knowing Violation Of Rights Of Another**

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

**b. Material Published With Knowledge Of Falsity**

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.



**c. Material Published Prior To Policy Period**

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

**d. Criminal Acts**

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

**e. Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

**f. Breach Of Contract**

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

**g. Quality Or Performance Of Goods – Failure To Conform To Statements**

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

**h. Wrong Description Of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

**i. Infringement Of Copyright, Patent, Trademark Or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

**j. Insureds In Media And Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **15.a.**, **b.** and **c.** of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**k. Electronic Chatrooms Or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**l. Unauthorized Use Of Another's Name Or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**m. Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

**n. Pollution-related**

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) "Claim" or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**o. Asbestos**

"Personal and advertising injury" for past, present or future claims arising in whole or in part either directly or indirectly, out of the manufacture, distribution, sale, resale, re-branding, installation, repair, removal, encapsulation, abatement, disposal of, replacement or handling of, exposure to, testing for or failure to disclose the presence of, asbestos or products containing asbestos whether or not the asbestos is or was at any time airborne as a fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this insurance does not apply to "personal and advertising injury" including expenses for:

- (1) The costs of clean up or removal of asbestos or products and materials containing asbestos;
- (2) The cost of such actions as may be necessary to monitor, assess and evaluate the release or threat of asbestos or products and material containing asbestos;
- (3) The cost of disposal of asbestos substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result; or
- (4) The cost of compliance with any law or regulation regarding asbestos.

**p. Biological Contaminants**

Any "claim" arising out of a "biological contaminant".

"Biological contaminant" means any biological irritant or contaminant including but not limited to any form of mold, mildew, mushroom, yeast, fungus, bacteria, virus, insect, allergen and any other type of biological agent, including any substance produced by, emanating from, or arising out of such "biological contaminant".

**q. Employment Practices**

Any "claim" arising out of or in any way related to:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, performance evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment related practices, procedures, policies, acts or omissions; or
- (4) Consequential "bodily injury" or "personal and advertising injury" as a result of (1) through (3) above.

This exclusion applies whether the Insured may be held liable as an employer or in any other capacity and to any obligation to share "damages" with or to repay someone else who must pay "damages" because of the injury.

It is further agreed that no coverage shall apply under this policy to any "claim" brought by or against any spouse, child, parent, brother or sister of the Insured or any other person.

The Company shall not have a duty to defend any "claim", "suit", arbitration or any other form of a trial court proceeding.

**r. Lead**

"Personal and advertising injury" for past, present or future claims arising in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, re-branding, installation, repair, removal, encapsulation, abatement, disposal of, replacement or handling of, exposure to, ingestion of or testing for, lead or products containing lead whether or not the lead is or was at any time airborne as a particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this insurance does not apply to "personal and advertising injury" including expenses for:

- (1) The costs of clean up or removal of lead or products and materials containing lead;
- (2) The cost of such actions as may be necessary to monitor, assess and evaluate the release or threat of same, of lead or products and material containing lead;
- (3) The cost of disposal of lead substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result; or
- (4) The cost of compliance with any law or regulation regarding lead.

**s. Sexual Abuse**

Any "claims" involving the use of excessive influence or power on any individual, or the actual or alleged inappropriate physical contact or contact that is deemed by or alleged by the individual to be sexual or in any way unwelcome.

**t. Prior Knowledge**

Any alleged act, error, omission, or circumstance likely to give rise to a "claim" that an Insured had knowledge of prior to the effective date of this policy. This exclusion includes, but is not limited to any prior "claim" or possible "claim" referenced in the Insured's application.

**u. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**v. Access Or Disclosure Of Confidential Or Personal Information**

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

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## **COVERAGE C – MEDICAL PAYMENTS**

### **1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
  - (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;provided that:
  - (a) The accident takes place in the "coverage territory" and during the policy period;
  - (b) The expenses are incurred and reported to us within one year of the date of the accident; and
  - (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
  - (1) First aid administered at the time of an accident;
  - (2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and
  - (3) Necessary ambulance, hospital, professional nursing and funeral services.

### **2. Exclusions**

We will not pay expenses for "bodily injury":

#### **a. Any Insured**

To any insured, except "volunteer workers".

#### **b. Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

#### **c. Injury On Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

#### **d. Workers' Compensation And Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

#### **e. Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletics contests.

#### **f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

#### **g. Coverage A Exclusions**

Excluded under Coverage A.

## **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

- 1. We will pay, with respect to any occurrence we investigate or any "claim" or "suit" against an insured that we settle or defend:
  - a. All expenses we incur.



- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the "claim" or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
  - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
  - b. This insurance applies to such liability assumed by the insured;
  - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
  - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
  - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
  - f. The indemnitee:
    - (1) Agrees in writing to:
      - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
      - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
      - (c) Notify any other insurer whose coverage is available to the indemnitee; and
      - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
    - (2) Provides us with written authorization to:
      - (a) Obtain records and other information related to the "suit"; and
      - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **2.b.(2)** of Section **I – Coverage A – Bodily Injury And Property Damage Liability**, such payments will not be deemed to be damages for "bodily injury" and "property damage" but will reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph **f.** above, are no longer met.

## **SECTION II – WHO IS AN INSURED**

### **1. If you are designated in the Declarations as:**

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

### **2. Each of the following is also an insured:**

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

#### **(1) "Bodily injury" or "personal and advertising injury":**

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph **(1)(a)** above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph **(1)(a)** or **(b)** above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

#### **(2) "Property damage" to property:**

- (a) Owned, occupied or used by;
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;  
you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker") or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- 3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. "Claims" made or "suits" brought; or
  - c. Persons or organizations making "claims" or bringing "suits".
- 2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - b. Damages under Coverage **B**.
- 3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
- 4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
- 5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for Damages under Coverage **A** because of all "bodily injury" and "property damage" arising out of any one "occurrence".
- 6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

#### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

## 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or offense which may result in a "claim". To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a "claim" is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the "claim" or "suit" and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or a "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

## 3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

## 4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

### a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

### b. Excess Insurance

- (1) This insurance is excess over:
  - (a) Any of the other insurance, whether primary, excess, contingent or on any other basis:
    - (i) That is Fire, Extended Coverage, Builders' Risk, Installation Risk or similar coverage for "your work";
    - (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;



- (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
- (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I – Coverage A – Bodily Injury And Property Damage Liability**.
- (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.
- (2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- (3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
  - (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
  - (b) The total of all deductible and self-insured amounts under all that other insurance.
- (4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**5. Premium Audit**

Premium for this coverage is computed in accordance with the Company's rules and rates. Any premium shown as advance premium may be a deposit premium only. If the premium is a deposit premium, at the close of each audit period, the Company will compute the earned premium for that period. Audit premiums are due and payable upon notice.

The Company may examine and audit the Insured's books and records at any time during the policy period and within three years after the final termination of this policy, as far as they relate to the subject matter of this policy.

The first Named Insured as shown in the Declarations must keep records of information the Company will need for premium computation and upon request must send the Company copies of the information.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom "claim" is made or "suit" is brought.

#### **8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

#### **9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 60 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

### **SECTION V – DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Claim" is a written demand for damages because of actual or alleged "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. "Claim" includes any "suit" as defined in this Policy.

5. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
- c. All other parts of the world if the injury or damage arises out of:
  - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
  - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
  - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;

provided the insured's responsibility to pay damages is determined only by actual law suits filed and maintained within the territory described in Paragraph a. above. This policy does not apply to "claims" pursued elsewhere.

6. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

7. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.

8. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
9. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

10. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

11. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

12. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
  - b. While it is in or on an aircraft, watercraft or "auto"; or
  - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;
- but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

- 13. "Mobile equipment"** means any of the following types of land vehicles, including any attached machinery or equipment:
- a.** Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b.** Vehicles maintained for use solely on or next to premises you own or rent;
  - c.** Vehicles that travel on crawler treads;
  - d.** Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1)** Power cranes, shovels, loaders, diggers or drills; or
    - (2)** Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - e.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - (2)** Cherry pickers and similar devices used to raise or lower workers;
  - f.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1)** Equipment designed primarily for:
  - (a)** Snow removal;
  - (b)** Road maintenance, but not construction or resurfacing; or
  - (c)** Street cleaning;
- (2)** Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

- 14. "Occurrence"** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 15. "Personal and advertising injury"** means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a.** False arrest, detention or imprisonment;
  - b.** Malicious prosecution;
  - c.** The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d.** Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e.** The use of another's advertising idea in your "advertisement".
- 16. "Pollutants"** mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.



**17. "Products-completed operations hazard":**

- a.** Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1)** Products that are still in your physical possession; or
  - (2)** Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
    - (a)** When all of the work called for in your contract has been completed.
    - (b)** When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
    - (c)** When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- b.** Does not include "bodily injury" or "property damage" arising out of:
  - (1)** The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
  - (2)** The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3)** Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

**18. "Property damage" means:**

- a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from, computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- 19. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:**
  - a.** An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 20. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.**
- 21. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.**
- 22. "Your product":**
  - a. Means:**
    - (1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

- (a) You;
- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

**23. "Your work":**

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

(2) The providing of or failure to provide warnings or instructions.

## LANDMARK AMERICAN INSURANCE COMPANY

***This Form Provides Claims-Made Coverage.  
Please Read The Entire Form Completely.***

## **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART – CLAIMS MADE AND REPORTED BASIS – BROAD FORM**

Throughout this document, the word “Insured” means any person or entity qualified as such under **Part I. E. Covered Persons and Entities**. The word “Company” refers to the Company providing the insurance shown on the Declarations.

Other words and phrases that appear in **bold** have special meaning. Refer to **Part III. Definitions**.

### **Part I. Insuring Agreement**

#### **A. Covered Services**

The Company will pay on behalf of the Insured, as shown in the Declarations, all sums that the Insured becomes legally obligated to pay as **Damages** and associated **Claim Expenses** arising out of a negligent act, error or omission, even if the **Claim** asserted is groundless, false or fraudulent, in the rendering of or failure to render professional services as described in the Business Description on the Declarations, provided that the:

1. **Claim** is first made against the Insured during the **Policy Period**, and reported to the Company no later than sixty (60) days after the end of the **Policy Period**;
2. Negligent act, error or omission took place in a covered territory;
3. Negligent act, error or omission took place after the **Retroactive Date** as shown in the Declarations.

#### **B. Defense and Settlement**

The Company will have the right and duty to defend any **Claim** against an Insured seeking **Damages** to which this policy applies, even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Company's right and duty to defend any **Claim** shall end when the Company's Limit of Liability has been exhausted by payment of **Damages** and/or **Claim Expenses**, or has been tendered to the Insured or to a court of competent jurisdiction.

The Company shall not settle any **Claim** without the Insured's written consent. The Insured shall not admit any liability for or settle any **Claim** or incur any costs, charges or expenses without the written consent of the Company.

The Company shall have the right and the duty to select legal counsel for the defense of a **Claim**. In the event the Insured is entitled by law to select independent counsel to defend the **Claim**, the **Claim Expenses** or other covered costs the Company must pay to that counsel are limited to the rates the Company actually pays to counsel retained by the Company in the defense of similar **Claims** in the community where the **Claim** is being defended. The Company may exercise the right to require that such counsel have experience in defending **Claims** similar to the one pending against the Insured. The Insured agrees that such counsel will comply with the Company's litigation guidelines and reporting requirements, timely respond to the Company's requests, and provide information regarding the **Claim** when requested.

#### **C. Policy Limits**

Regardless of the number of persons or entities insured or included in **Part I. E. Covered Persons and Entities**, or the number of claimants or **Claims** made against the Insured:

1. The maximum liability of the Company for **Damages** resulting from each **Claim** first made against the Insured during the **Policy Period** and the Extended Reporting Period, if purchased, shall not exceed the amount shown in the Declarations as each **Claim**;
2. The maximum liability of the Company for all **Damages** as a result of all **Claims** first made against

the Insured during the **Policy Period** and the Extended Reporting Period, if purchased, shall not exceed the amount shown in the Declarations as Aggregate.

The inclusion of more than one Insured, or the making of **Claims** by more than one person or organization, does not increase the Company's Limit of Liability. All **Claims** arising out of a single negligent act, error or omission, or a series of related negligent acts, errors or omissions by one or more Insureds shall be treated as a single **Claim** for all purposes of this policy. All **Claims** shall be deemed first made when the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period** and all such **Claims** shall be subject to the same Each Claim Limit of Liability during that **Policy Period**.

**Claim Expenses** shall be paid by the Company in addition to the applicable Limits of Liability stated in the Declarations. The Company's obligation to pay **Claim Expenses** in addition to the applicable Limits of Liability as shown in the Declarations shall be limited to an additional **Claims Expense** Limits of Liability equal to the amount as shown in the Declarations as the Each Claim Limit of Liability.

The Company shall not be obligated to pay any **Claim** for **Damages** or defend any **Claim** after the Limit of Liability has been exhausted by payment of judgments, settlements, **Claim Expenses** or any combination thereof.

#### D. Deductible Provisions

The deductible amount as shown in the Declarations shall be paid by the Insured and applies to each **Claim** and includes **Damages** or **Claim Expenses**, whether or not a loss payment is made. If the deductible amount is initially paid by the Company, the Named Insured shall reimburse the amount paid within thirty (30) days, upon written request of the Company.

#### E. Covered Persons and Entities

1. Named Insured as shown in the Declarations, and if the Named Insured is an individual, his or her spouse, or domestic partner, but only with respect to the professional services rendered by or on behalf of the Named Insured;
2. Any present or former principal, partner, officer, director, member, employee or volunteer worker of the Named Insured, but only as respects professional services rendered on behalf of the Named Insured;
3. Heirs, Executors, Administrators, and in the event of an Insured's death, incapacity or bankruptcy, legal representatives of any Insured, but only with respect to professional services rendered prior to such Insured's death, incapacity or bankruptcy;
4. Any Medical Director while acting within the scope of his/her administrative and supervisory duties for the Named Insured. It is further agreed that coverage does not apply to the Medical Director while acting within his/her capacity as a Physician, Surgeon or Dentist in the treatment, or direction of the treatment, of any patient;
5. Any student enrolled in a training program, but only while acting within the scope of their duties as such and under the direct supervision of faculty members or educators of such training program;
6. Any faculty member or educator of a training program, but only while acting within the scope of their duties as such.

#### F. Covered Territory

This policy applies to covered **Claims** arising out of negligent acts, errors or omissions committed anywhere in the world. However, the policy does not provide coverage for **Claims** made against the Insured in countries where the United States of America has declared or imposed a trade embargo or sanctions, or in countries where the United States of America does not maintain diplomatic relations.

#### G. Extended Reporting Period

If the policy is not renewed for any reason, or is cancelled for any reason other than for nonpayment of premium or deductible (whether cancelled by the Company or by the Named Insured), the Named Insured as shown on the Declarations, has the right to purchase, within sixty (60) days of policy termination, an extension of the coverage granted by this policy. This reporting period extension shall



remain in force for a period of either twelve (12), twenty-four (24), or thirty-six (36) months after the policy terminates, but only for **Claims** resulting from negligent acts, errors or omissions committed before the effective date of the cancellation or nonrenewal, and otherwise covered by this policy. Increased premiums or deductibles or modifications of coverage terms or conditions upon renewal do not constitute cancellation or nonrenewal.

The premium for this Extended Reporting Period will not exceed one hundred percent (100%) for twelve months, one hundred fifty percent (150%) for twenty-four months or one hundred seventy-five percent (175%) for thirty-six months of the full annual premium set forth in the Declarations and any attached endorsements, and must be elected and paid within sixty (60) days after the effective date of the policy's termination. Such additional premium is deemed fully earned immediately upon the inception of the Extended Reporting Period.

The Extended Reporting Period is added by endorsement and, once endorsed, cannot be cancelled. The Extended Reporting Period does not reinstate or increase the Limits of Liability. The Company's Limits of Liability during the Extended Reporting Period are part of, and not in addition to, the Company's Limits of Liability stated in the Declarations.

#### H. Supplementary Coverages

It is agreed that any and all payments made for the following is included within, and shall not be in addition to, the Policy Limits as described in this Policy.

1. The Company will pay **Claim Expenses** incurred in the defense of any disciplinary proceeding or investigation against an Insured by any licensing board, disciplinary board, peer review committee, or similar entity alleging professional misconduct or violation of the rules of professional conduct, provided that the alleged misconduct or violation first occurred after the **Retroactive Date** and arises out of the Insured's performance of the Named Insured's professional services as described in the Declarations. This provision applies only to disciplinary proceedings first brought against an Insured during the **Policy Period** and reported to the Company no later than sixty (60) days after the end of **Policy Period**. The Company's obligation to defend an Insured under the provision is subject to a sub-Limit of Liability of \$25,000 and applies only to **Claims Expenses** incurred with the consent of the Company. **Damages** are not covered by this provision.

This sub-Limit of Liability is the maximum amount payable under this provision for the **Policy Period**, regardless of the number of disciplinary proceedings first commenced during the **Policy Period** or the number of Insureds subject to disciplinary proceedings. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.

2. The Company will pay reasonable expenses incurred by the Insured at the Company's request to assist in the investigation of the **Claim** or defense of the suit, including actual loss of earnings up to \$500 a day for each Insured because of time off from work, subject to an aggregate amount of \$5,000 for each individual Insured for each **Claim**, not to exceed an aggregate amount of \$10,000 per **Policy Period**. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.
3. The Company will pay fines and penalties specified in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Health Information Technology for Economic and Clinical Health Act (HITECH) as assessed against the Insured, or assessed against third parties who make a claim on the Insured for indemnification or contribution for such fines and penalties based on violations and breaches of the privacy and security provisions of HIPAA, and HITECH, and/or regulations promulgated under said statutes relating to Protected Health Information (PHI) and electronic Protected Health Information (ePHI), but only if such violations or breaches arise out of professional services as described in the Declarations or from the handling of PHI or ePHI of the Insured's own personnel.

For the purposes of this coverage, **Claim** shall also include the notice of investigation, audit, and/or assessment of fines or penalties by the U.S. Department of Health and Human Services or the Office of Civil Rights in connection with violations of or breaches under HIPAA and/or HITECH.

For the purposes of this coverage, **Damages** shall also include HIPAA and/or HITECH fines and

penalties.

The coverage described above is subject to a sub-Limit of Liability in an aggregate amount of \$100,000. This sub-Limit of Liability is the maximum amount payable under this provision for the **Policy Period**, regardless of the number of violations and/or breaches by the Insured of the privacy and security provisions of HIPAA and HITECH and the regulations established thereunder arising from the performance of or failure to perform professional services as described in the Declarations. Any payments made under this provision are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.

4. The Company will pay **Damages** or **Claims Expenses** as a result of **Claims** arising out of circumstances involving the use of excessive influence of power on any patient, or the actual or alleged inappropriate physical contact or contact that is deemed by or alleged by any patient to be sexual or in any way unwelcomed, is limited to a sub-Limit of Liability of \$250,000 each claim and \$500,000 in the aggregate. This sub-limit of liability is part of and not in addition to the applicable Limits of Liability as shown in the Declarations. Payment of **Damages** or **Claim Expenses** by the Company reduces the applicable Limits of Liability as shown in the Declarations.

Once the sub-Limit of Liability is exhausted, no additional coverage shall be afforded by this coverage provision and the following Exclusion will be added to the policy:

It is agreed that no coverage shall apply under this policy to any **Claim** or **Claim Expenses** arising out of or involving the use of excessive influence or power on any patient, or the actual or alleged inappropriate physical contact or contact that is deemed by or alleged by any patient to be sexual or in any way unwelcomed.

## Part II. Exclusions

This policy does not apply to any **Claim** or **Claim Expenses** based upon or arising out of:

- A. **Personal and Advertising Liability.**
- B. Obligations of any Insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.
- C. **Bodily Injury** to any of the following:
  1. Officers, directors, partners, employees or volunteer workers of the Insured arising out of and in the course of employment by the insured;
  2. The spouse, child, parent, or sibling of **C. (1.)** above.
- D. The insolvency or bankruptcy of an Insured or of any other person, firm or organization.
- E. Dishonest, fraudulent, criminal, malicious, or intentional acts, errors or omissions committed by or at the direction of any Insured.
- F. Any business enterprise not named in the Declarations which is owned, controlled, operated or managed by any Insured.
- G. A **Claim** by one Insured under this policy against another Insured under this policy, unless such **Claim** arises solely out of professional services performed for that party.
- H. Any obligation or liability assumed by the Insured under any contract or any oral or written agreement, unless liability would have attached in the absence of such a contract or agreement, including the Insured's decision to unilaterally terminate or otherwise alter, remove or abridge any rights, benefits or obligations under any contract or agreement.
- I. The ownership, rental, leasing, maintenance, use (including operation, loading and unloading), or repair of any real or personal property, including **Damage** to property owned, occupied or used by, rented to or leased to an Insured.
- J. The rendering or failure to render professional services by the Insured as a physician, surgeon or dentist.
- K. The performance of any service by any Insured while under the influence of intoxicants or illegal drugs.

- L. The ownership, maintenance, use (including operation, loading and unloading), or entrustment to others of any aircraft, automobile, motor vehicle, mobile vehicles or watercraft owned or operated by or rented or loaned to any insured. This exclusion includes the movement of patients in and out of any motor vehicle, aircraft, automobile or watercraft.
- M. 1. The actual, alleged or threatened presence, discharge, dispersal, seepage, migration, release or escape of **Pollutants** or asbestos;
2. The failure to discover or disclose the existence or amount of **Pollutants** or asbestos;
3. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with M. (1.) or (2.) above;
4. Any request, demand or order that any Insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or, in any way respond to or assess the effects of **Pollutants** or asbestos;
5. Any **Claim** or suit by or on behalf of a governmental authority for **Damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or, in any way, responding to, or assessing the effect of **Pollutants** or asbestos.
- N. 1. Refusal to employ;
2. Termination of employment;
3. Coercion, demotion, performance evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, retaliation or other employment related practices, procedures, policies, acts or omissions;
4. Consequential **Bodily Injury** or **Personal Injury** as a result of N. (1.) through (3.) above.
- This exclusion applies whether the Insured may be held liable as an employer or in any other capacity and to any obligation to share **Damages** with or to repay someone else who must pay **Damages** because of the injury.
- It is further agreed that no coverage shall apply under this policy to any **Claim** brought by or against any spouse, child, parent, brother or sister of the Insured or any other person. The Company shall not have a duty to defend any **Claim**, suit, arbitration or any other form of trial court proceeding.
- O. Any alleged act, error, omission, or circumstance likely to give rise to a **Claim** that an Insured had knowledge of prior to the effective date of this policy. This exclusion includes, but is not limited to, any prior **Claim** or possible **Claim** referenced in the Insured's application.
- P. Infringement of copyright, patent, trademark, trade name, trade dress, service mark, title or slogan.
- Q. Experimental procedures and experimental products, including procedures using experimental products. Experimental procedures and products are those not approved by the United States Food and Drug Administration (FDA).
- R. Obstetrical procedures, including but not limited to any emergency obstetrical procedures.

### Part III. Definitions

- A. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
1. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
2. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
- B. **Bodily Injury** means physical or mental harm, sickness or disease sustained by a person including death resulting from any of these at any time.
- C. **Claim** means a written demand for monetary or non-monetary relief received by the Insured during the **Policy Period**, including the service of suit, or the institution of an arbitration proceeding. Additionally,

**Claims** that arise from an incident, occurrence or offense first reported by the Insured during the **Policy Period** and accepted by the Company in accordance with **Part IV. A. Notice of Claim** will be considered a **Claim** first made during the **Policy Period**.

- D. Claim Expense** means expenses incurred by the Company or the Insured with the Company's consent in the investigation, adjustment, negotiation, arbitration, mediation and defense of covered **Claims**, whether paid by the Company or the Insured with the Company's consent, and includes:
1. Attorney fees;
  2. Costs taxed against the Insured in any **Claim** defended by the Company;
  3. Interest on the full amount of any judgment that accrues after entry of the judgment and before the Company has paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit of Liability;
  4. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the available applicable policy limit and only if said **Claims** are covered by the policy;
  5. Reasonable expenses incurred by the Insured at the Company's request other than:
    - a. Loss of earnings;
    - b. Salaries or other compensation paid to the Insured or any employee of the Insured.
- E. Damages** means compensatory judgment, award or settlement, including punitive or exemplary damages, except damages for which insurance is prohibited by law. **Damages** does not include disputes over fees, deposits, commissions or charges for goods or services.
- F. Policy Period** means the period of time stated in the Declarations or any shorter period resulting from policy cancellation or amendment to the policy.
- G. Personal and Advertising injury** means injury, including consequential **Bodily Injury**, arising out of one or more of the following offenses:
1. False arrest, detention or imprisonment;
  2. Malicious prosecution or abuse of process;
  3. Wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  4. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  5. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  6. Use of another's advertising idea in your **Advertisement**; or
  7. Infringing upon another's copyright, trade dress or slogan in your **Advertisement**.
- H. Retroactive Date** means the date stated in the Declarations on or after which any alleged or actual negligent act, error or omission must have first taken place in order to be considered for coverage under this policy.
- I. Pollutants** means any solid, liquid, gaseous or thermal irritant, contaminant or toxin, whether live or inanimate; including, but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals, silica, lead, lead compounds or materials containing lead, asbestos, asbestos compounds or materials containing asbestos, radon, waste or any like substances. Waste includes materials to be recycled, reconditioned or reclaimed.

**Part IV. General Conditions.** The following Conditions are a precedent to coverage under the Policy:

**A. Notice of Claim**

The Insured must notify the Company as soon as practicable of an incident, occurrence or offense that may reasonably be expected to result in a **Claim**. Where notice to the Company of such incidents, occurrences or offenses has been acknowledged as adequate by the Company in writing, subsequent



**Claims** derived from such incidents, occurrences or offenses will be deemed as first made at the time the incident, occurrence or offense giving rise to such **Claim** was first provided. The Insured also must immediately send copies to the Company of any demands, notices, summonses or legal papers received in connection with any **Claim**, and must authorize the Company to obtain records and other information. Please send all claim information to:

Attention: **Claims** Dept.  
RSUI Group, Inc.  
945 East Paces Ferry Road, Suite 1800  
Atlanta, Georgia 30326-1160  
Or Via Email:  
[reportclaims@rsui.com](mailto:reportclaims@rsui.com)

**B. Prohibition of Voluntary Payments and Settlements**

With respect to any **Claim** covered under this policy, the Insured will not make payment, admit liability, settle **Claims**, assume any obligation, agree to arbitration or any other means of resolution of any dispute, waive any rights or incur **Claim Expenses** without prior written Company approval, except at the Insured's own cost.

**C. Cooperation**

The Insured will cooperate with the Company in the conduct of a **Claim** and, upon the Company's request, submit to examination and interrogation by the Company representative, under oath if required, and will attend hearings and trials and assist in effecting settlements, securing and giving evidence, and obtaining the attendance of witnesses. The Insured shall further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment that the Insured may have, and the Company may exercise those rights in the name of the Insured.

**D. Nonrenewal**

The Company will give the Named Insured sixty (60) days written notice prior to nonrenewal of this policy by mailing or delivering the notice to the first Named Insured's last known mailing address as shown in the Declarations.

**E. Premium and Audit**

Premium for this coverage is computed in accordance with the Company's rules and rates. Any premium shown as advance premium may be a deposit premium only. If the premium is a deposit premium, at the close of each audit period, the Company will compute the earned premium for that period. Audit premiums are due and payable upon notice.

The Company may examine and audit the Insured's books and records at any time during the **Policy Period** and within three years after the final termination of this policy, as far as they relate to the subject matter of this policy.

The first Named Insured, as shown in the Declarations, must keep records of information the Company will need for premium computation and, upon request, must send the Company copies of the information.

**F. Authorization**

The first Named Insured listed in the Declarations agrees to act as the Named Insured with respect to giving and receiving of all notices, exercising the Extended Reporting Period option, canceling the policy, paying all premiums and deductibles and receiving any return premiums that may become due.

**G. Subrogation**

In the event of any **Claim** under this policy, the Company will be subrogated to all the Insured's rights of recovery against any person or organization, and the Insured will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured will do nothing after the loss to prejudice such rights.

**H. Other Insurance**

This policy will be excess over, and will not contribute with, any other existing insurance, unless such

other insurance is specifically written to be excess of this policy.

When this insurance is excess, the Company shall have no duty under this policy to defend any **Claim** or suit that any other insurer has a duty to defend. If such other insurer refuses to defend such **Claim** or suit, the Company shall be entitled to the Insured's rights against all such insurers for any **Claim Expenses** incurred by the Company.

If it is determined that both this insurance and other insurance or self insurance apply to any **Claim** on the same basis, whether primary, excess or contingent, the Company will not be liable under this policy for a greater proportion of the **Damages** or **Claim Expenses** than the applicable Limit of Liability under the policy for such **Damages** bears to the total applicable Limit of Liability of all other insurance or self insurance, whether or not collectible against such **Claims**.

**I. Actions Against the Insurer**

No action will be taken against the Company unless, as a condition precedent, the Insured is in full compliance with all of the terms of this policy, and until the amount of the Insured's obligations to pay shall have been finally determined, either by judgment against the Insured after actual trial, or by written agreement of the Insured, the claimant and the Company.

**J. Coverage in Bankruptcy**

Bankruptcy or insolvency of the Insured or of the Insured's estate does not relieve the Company of its obligations under this policy.

**K. False or Fraudulent Claims**

If an Insured knowingly makes any **Claim** that is false or fraudulent, this insurance shall become void and entitlement to coverage for all **Claims** hereunder shall be forfeited.

**L. Application**

The Insured agrees that the statements in the application are personal representations, that they shall be deemed material and that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between the Insured and the Company, or any of its agents, relating to this insurance. The signed application, and any attachments thereto, submitted in connection with this Policy are incorporated herein and constitute a part of this Policy.

**LANDMARK AMERICAN INSURANCE COMPANY****COMMON POLICY CONDITIONS**

All Coverage Parts included in this policy are subject to the following conditions.

**A. CANCELLATION**

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium or deductible; or
  - b. 60 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

**B. CHANGES**

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

**C. EXAMINATION OF YOUR BOOKS AND RECORDS**

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

**D. INSPECTIONS AND SURVEYS**

We have the right but are not obligated to:

1. Make inspections and surveys at any time;
2. Give you reports on the conditions we find; and
3. Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

1. Are safe or healthful; or
2. Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

**E. PREMIUMS**

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

**F. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.





**RSUI Group, Inc.**  
945 East Paces Ferry Road  
Suite 1800  
Atlanta, GA 30326-1160

Phone (404) 231-2366  
Fax (404) 231-3755

ATTN: Health Care Providers – Applicants and Policyholders

RE: HIPAA Privacy and Security Rule Compliance

The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and associated regulations require health care providers to maintain the confidentiality of patients’ protected health information (“PHI”). PHI includes, among other things, medical records and billing records relating to medical care. As a “covered entity” under HIPAA, you are not permitted to share PHI with a “business associate” unless the business associate has provided you with a Business Associate Agreement that provides for the protection of PHI. Although a professional liability insurer may not be deemed to be a “business associate” as defined by HIPAA, we want to assure your compliance with the regulations in the event a Business Associate Agreement is necessary.

We are committed to maintaining the confidentiality of PHI that you may provide as a part of the administration of your insurance coverage. Enclosed you will find a Business Associate Agreement that explains how we will safeguard any PHI that you may provide to us in the process of underwriting your policy or handling a claim on your behalf. Please review it and keep it with your professional liability policy. You do not need to sign or return this agreement to us. Please maintain it in your files to document our mutual obligations with respect to PHI.

If you have any questions or concerns about the Business Associate Agreement, please contact Whitney Thomas at (404)260-3795 or [whitneythomas@rsui.com](mailto:whitneythomas@rsui.com).

Sincerely,

A handwritten signature in black ink that reads "Whitney Thomas". The signature is written in a cursive, flowing style.

Whitney Thomas  
Regulatory Compliance  
RSUI Group, Inc.

RSUI Indemnity Company  
Landmark American Insurance Company  
Covington Specialty Insurance Company

Landmark v. Nurselect MSJ\_00000222

A member of Allegheny American Insurance Group LLC LAND0000045

## **BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is executed by Landmark American Insurance Company, Covington Specialty Insurance Company, RSUI Indemnity Company and RSUI Group, Inc. ("Business Associate") in favor of its insured healthcare providers (the "Provider").

### **RECITALS**

WHEREAS, the Business Associate provides professional liability insurance to the Provider pursuant to a policy of insurance (the "Business Arrangement"), and in connection with the Business Arrangement the Provider discloses to the Business Associate certain individually identifiable protected health information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended from time to time.

WHEREAS, the parties desire to comply with the HIPAA standards for privacy of PHI of patients of the Provider, and to set forth the terms and conditions pursuant to which the parties will handle PHI that Business Associate receives in the course of performing its services for or on behalf of the Provider under the Business Arrangement.

NOW THEREFORE, for and in consideration of the recitals above, the benefits to Business Associate under the Business Arrangement and the mutual covenants and conditions herein contained, Business Associate agrees as follows:

### **SECTION 1 – DEFINITIONS**

Terms used, but not otherwise defined in the Agreement shall have the same meaning as set forth in the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rules"), 45 CFR parts 160-164, as promulgated by the United States Department of Health and Human Services ("HHS"), as amended from time to time.

### **SECTION II – OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- a. Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to Provider any use or disclosure of the PHI, of which it becomes aware, and otherwise not provided for by this Agreement.
- e. Business Associate shall require its agents and subcontractors that receive PHI from Business Associate or Provider to agree to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Business Associate agrees to make available and provide right of access to PHI held by the Business Associate that does not merely duplicate the information maintained by the Provider, to Provider at its request, or as directed by Provider, to an Individual. Business Associate shall provide access within reasonable time and manner as specified by Provider.

- g. Business Associate agrees to incorporate all amendments or corrections to PHI when notified by the Provider in writing that such information is inaccurate or incomplete. 45 CFR § 164.526
- h. Business Associate agrees to make available to the Secretary of HHS (or its designee) all internal practices, books, and records relating to the use and/or disclosure of PHI received from the Provider, for purposes of determining the Provider's compliance with the Privacy Rules, subject to attorney-client and other applicable legal privileges.
- i. Business Associate agrees to provide an accounting of such disclosures of PHI to Provider or, as directed by Provider, to an Individual in accordance with 45 CFR § 164.528, as amended from time to time. Business Associate shall provide such accounting within a reasonable time and manner as specified by the Provider.
- j. Business Associate shall comply with all applicable requirements of the HIPAA Security Rule.
- k. Business Associate shall immediately report to Covered Entity any breach of PHI, as defined by HIPAA. Business Associate shall cooperate with Covered Entity's investigation, mitigation and response efforts related to any such breach. Additionally, Business Associate shall be responsible for any costs, liabilities, damages, expenses, and attorney's fees incurred by Covered Entity related to such breach.
- l. In the event Business Associate undertakes any of Covered Entity's duties under HIPAA, Business Associate shall comply with all HIPAA regulations applicable to Covered Entity in the discharge of such duties.

## **2.1 PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE**

- a. Business Associate, its agents and employees, may use or disclose PHI as necessary to perform its duties under the Business Arrangement and only as allowed by the terms of the Business Arrangement, this Agreement, or as required or allowed by law.
- b. Business Associate may also use and/or disclose PHI as necessary for the proper management and administration of Business Associate, and to carry out the legal responsibilities of Business Associate.
- c. Business Associate agrees that it will not use or disclose PHI in a manner that violates or would violate the Privacy Rules, or the minimum necessary policies and procedures of the Provider that are communicated to Business Associate.
- d. Business Associate may use PHI to report violations of the law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

## **SECTION III – OBLIGATIONS OF THE PROVIDER**

- a. Provider shall notify Business Associate of any limitation(s) in the Provider's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. Provider shall notify Business Associate, in writing and in a timely manner, of any restrictions or other arrangement to which the Provider has agreed with an individual in accordance with 45 CFR § 164.522, to the extent that such changes may affect Business Associate's use or disclosure of PHI hereunder; provided however, that the Provider will not agree to, and Business Associate will not be required to comply with, any restriction that is inconsistent with the purpose or terms of the Business Arrangement.

### **3.1 PERMISSIBLE REQUESTS BY PROVIDER**

Provider shall not request Business Associate to use and/or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Provider; provided however, that the Business Associate will use or disclose PHI for management and administrative activities of the Business Associate as outlined in Section 2.1.

## **SECTION IV – TERM AND TERMINATION**

### **4.1 TERM AND TERMINATION**

This Agreement shall remain in effect for the entire term of the Business Arrangement, or until terminated as set forth herein. This Agreement will automatically terminate without further action of the parties upon the termination or expiration of the Business Arrangement, subject to the following:

The Provider acknowledges and agrees that, due to the nature of the Business Arrangement, the Business Associate must have the ability to receive PHI from the Provider for as long as the Business Arrangement is in place, and that the Business Associate must have the ability to receive PHI from the Provider for the duration of any defense obligations arising under the Business Arrangement. Thus, the Provider acknowledges and agrees that termination of this Agreement is not feasible as long as the Business Arrangement is in place, or as long as Business Associate has any defense obligations arising under the Business Arrangement. Accordingly, any other provision in this Agreement notwithstanding, the parties agree that (a) any notice of termination of this Agreement will also serve as notice of termination of the Business Arrangement, (b) the termination of this Agreement will under no circumstances be effective until the termination of the Business Arrangement is effective, and (c) this Agreement may not be terminated and will remain in effect as long as Business Associate has any defense obligations arising under the Business Arrangement.

### **4.2 TERMINATION FOR MATERIAL BREACH**

Subject to Section 4.1, upon Provider's knowledge of a material breach by Business Associate, Provider shall either:

- a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Business Arrangement if Business Associate does not cure the breach or end the violation within a reasonable time specified by the Provider;
- b. Immediately terminate this Agreement and the Business Arrangement if the Business Associate has breached a material term of this Agreement and cure is not possible; or
- c. If neither termination nor cure is feasible, Provider shall report the violation to the Secretary of HHS.

### **4.3 RETURN/DESTRUCTION OF PHI**

Except as provided in Section 4.4, upon termination of the Business Arrangement (and any ongoing defense obligations, if applicable), for any reason, Business Associate will, if feasible, return or destroy PHI received from, or created or received by it on behalf of the Provider that Business Associate maintains in any form, including any backup tapes. Business Associate shall retain no copies of such information. Business Associate further agrees to use its best efforts to recover PHI in the possession of subcontractors or agents.



**4.4 NO FEASIBLE OR PRACTICAL RETURN/DESTRUCTION OF PHI**

Business Associate has determined that returning or destroying PHI is infeasible for ongoing defense obligations (if applicable), state regulatory requirements imposed upon professional liability insurers, such as reporting, review, and audit requirements, and carrying out any necessary business responsibility of the Business Associate. This serves as Business Associate's notification to Provider of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

**SECTION V – MISCELLANEOUS**

- a. Regulatory References – A reference in this Agreement to a section of the Privacy Rule means the section as in effect or as amended.
- b. Amendment – The parties recognize that this Agreement may need to be modified from time to time and agree to take such action as is necessary to amend this Agreement for Provider to comply with federal and state law including, but not limited to the requirements of the Privacy Rule and HIPAA.
- c. Survival – The respective rights and obligations of Business Associate under Section 4.3 of this Agreement shall survive the termination of this Agreement.
- d. Notices – All notices and other communications required or permitted pursuant to this Agreement shall be in writing, addressed to the party at the party's regular business address. All notices and other communications shall be sent by overnight courier or sent by registered or certified mail, return receipt requested.
- e. Interpretation – Any ambiguity in this Agreement shall be resolved to permit Provider to comply with HIPAA and the Privacy Rules.

**BUSINESS ASSOCIATE:**

Signed:



Michael Wayman  
Senior Vice President  
RSUI Group, Inc.

Address for Notice:

RSUI Group, Inc.  
945 East Paces Ferry Road  
Suite 1800  
Atlanta, GA 30326-1160

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **ADDITIONAL INSURED ENDORSEMENT (BLANKET)**

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This endorsement modifies insurance provided under the following:

### **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD**

1. In consideration of the premium charged, the following is added as an Additional Insured, but solely with regard to professional services rendered or that should have been rendered by the Named Insured:

Any person or organization to whom or to which the Named Insured is obligated by virtue of a written contract or by the issuance or existence of a written permit, to provide insurance such as is afforded by this policy.

2. It is also agreed that the policy does not apply to:

- a. **Claims** by an Additional Insured against the Named Insured;
- b. **Claims** that include allegation or facts indicating sole liability on the part of an Additional Insured.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 01

*This Endorsement Changes The Policy. Please Read It Carefully.*

## COMMUNICABLE DISEASE EXCLUSION

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**

**2. Exclusions**

This insurance does not apply to:

**Communicable Disease**

"Bodily injury" or "property damage" arising out of the actual or alleged transmission of a "communicable disease".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a "communicable disease";
- b. Testing for a "communicable disease";
- c. Failure to prevent the spread of the disease; or
- d. Failure to report the disease to authorities.

**B. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

**2. Exclusions**

This insurance does not apply to:

**Communicable Disease**

"Personal and advertising injury" arising out of the actual or alleged transmission of a "communicable disease".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a "communicable disease";
- b. Testing for a "communicable disease";
- c. Failure to prevent the spread of the disease; or
- d. Failure to report the disease to authorities.

**C. For the purposes of this exclusion:**

"Communicable disease" means any illness or disease caused by an infectious agent or its toxins, including but not limited to any bacteria, virus, mold, mildew, fungi, or parasite, that occurs through the direct or indirect transmission of the infectious agent or its product.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 02

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **CROSS COVERAGE EXCLUSION – MEDICAL BROAD FORM**

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This endorsement modifies insurance provided under the following:

### **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE**

The Medical Professional Liability coverage and the Commercial General Liability coverage provided in this Policy are mutually exclusive.

It is agreed that any claim, damages, Supplementary Payments, or any amounts covered under the Commercial General Liability Coverage Form Claims Made RSG 51030 shall not also be covered under the Medical Professional Liability Coverage Part Claims Made and Reported Basis-Broad-RSG 51044.

It is further agreed that any **Claim, Damages, or Claim Expenses** or any amounts covered under the Medical Professional Liability Coverage Part Claims Made and Reported Basis-Broad-RSG 51044 shall not also be covered under the Commercial General Liability Coverage Form Claims Made RSG 51030. Whenever any **Claim** is determined to be covered, either wholly or in part, by the Medical Professional Liability Coverage Part Claims Made and Reported Basis-Broad-RSG 51044, the Commercial General Liability Coverage Form shall not apply and the maximum liability of the Company shall not exceed the Professional Liability Each Claim limit of liability shown in the Declarations.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 03



*This Endorsement Changes The Policy. Please Read It Carefully.*

## CRYPTOCURRENCY EXCLUSION

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This endorsement modifies insurance provided under the following:

### MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE

1. In consideration of the premium charged, it is agreed that no coverage shall apply under this policy to any **Claim** and/or **Claim Expenses** alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving **Cryptocurrency** or any **Cryptocurrency Offering**.
2. It is agreed that the following definitions are added to **Part III. Definitions**:
  - A. **Cryptocurrency** means any actual or purported electronic, computer derived, digital or virtual instrument, asset, currency, token, coin, unit of account, store of value, funds, or medium of exchange using encryption techniques, methodologies, or technology, including blockchain or similar mechanisms, to secure, verify and/or validate the transfer of such electronic, computer derived, digital or virtual instrument, asset, currency, unit of account, store of value, funds, or medium of exchange between one or more parties.
  - B. **Cryptocurrency Offering** means any direct, indirect, actual, alleged, attempted, or proposed purchase or sale, or offer to purchase or sell, any **Cryptocurrency** issued or created by, or in connection with the Insured.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 04

*This Endorsement Changes The Policy. Please Read It Carefully.*

## DEDUCTIBLE LIABILITY INSURANCE (COMBINATION POLICY – MULTIPLE DEDUCTIBLES)

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Coverage	Amount and Basis of Deductible	
	PER CLAIM	or PER OCCURRENCE
1) Bodily Injury Liability OR		
2) Property Damage Liability OR		
3) Personal and Advertising Injury Liability OR		
4) Bodily Injury Liability, Property Damage Liability, Personal and Advertising Injury Liability	\$ 2,500	

**APPLICATION OF ENDORSEMENT** (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all “Bodily Injury”, “Property Damage” and “Personal and Advertising Injury” Liability, however caused):

1. Our obligation under the Bodily Injury Liability, Property Damage Liability, and Personal and Advertising Injury Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.
2. The deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:
  - A. PER CLAIM BASIS. If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:
    - 1) Under Bodily Injury Liability coverage, to all damages sustained by any one person because of “Bodily Injury”;
    - 2) Under Property Damage Liability Coverage, to all damages sustained by any one person because of “Property Damage”;

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 05

- 3) Under Personal and Advertising Injury Liability Coverage, to all damages sustained by any one person because of "Personal and Advertising Injury".
- 4) Under Bodily Injury Liability, Property Damage Liability, and Personal and Advertising Injury Liability Coverages Combined, to all damages sustained by any one person because of:
  - a) "Bodily Injury";
  - b) "Property Damage";
  - c) "Personal and Advertising Injury".

If damages are claimed for care, loss of services or death resulting at any time from "Bodily Injury", a separate deductible amount will be applied to each person making a claim for such damages.

With respects to "Property Damage" and "Personal and Advertising Injury" Liability, person includes an organization.

- B. PER OCCURRENCE BASIS. If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:

- 1) Under Bodily Injury Liability Coverage, to all damages because of "Bodily Injury";
- 2) Under Property Damage Liability Coverage, to all damages because of "Property Damage";
- 3) Under Personal and Advertising Injury Liability Coverage, to all damages sustained by any one person because of "Personal and Advertising Injury".
- 4) Under Bodily Injury Liability, Property Damage Liability, and Personal and Advertising Injury Liability Coverages Combined, to all damages sustained by any one person because of:
  - a) "Bodily Injury";
  - b) "Property Damage";
  - c) "Personal and Advertising Injury".

3. The terms of this insurance, including those with respect to:

- a) Our right and duty to defend any "suits" seeking those damages; and
  - b) Your duties in the event of any "occurrence", claim, or "suit"
- apply irrespective of the application of the deductible amount.

4. We may pay any part of all of the deductible amount to effect settlement of any claims or "suit" and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.
5. When used in this endorsement, damages includes any payments made under the Supplementary Payments provisions of this policy.
6. If you do not promptly reimburse us for any deductible amount owned, then any cost incurred by us in collection of the deductible amount will be added and applied in addition to the applicable deductible amount without limitation. These costs include, but are not limited to, collection agency fees, attorney's fees and interest.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **EXCLUSION – CORRECTIONAL MEDICINE**

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This endorsement modifies insurance provided under the following:

### **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD**

In consideration of the premium charged, it is agreed no coverage shall apply under this policy to any **Claim** and/or **Claim Expenses** based upon, arising out of, or in any way involving the rendering of or failure to render services of a professional nature, including healthcare services and medical services, by the Insured or by any person or organization for whose acts, errors or omissions the Insured is legally responsible, in a correctional facility or center, detention center, jail, penal institution, prison, remand center, reformatory, or any similar center, facility, or institution.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 06



*This Endorsement Changes The Policy. Please Read It Carefully.*

## **EXCLUSION – DESIGNATED PROFESSIONAL SERVICES**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

#### **SCHEDULE**

<b>Description Of Professional Services:</b>
ALLIED HEALTHCARE STAFFING AGENCY

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to any professional services shown in the Schedule, the following exclusion is added to Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** and Paragraph 2., **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability**:

This insurance does not apply to “bodily injury”, “property damage” or “personal and advertising injury” due to the rendering of or failure to render any professional service.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 07

*This Endorsement Changes The Policy. Please Read It Carefully.*

## HIRED AND NON-OWNED AUTO LIABILITY

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE FORM

In consideration of an additional premium of \$Included, it is hereby understood and agreed that the policy is amended as follows:

- A.** The declarations page is amended to include the following under **Commercial General Liability** in the **LIMITS OF INSURANCE** section:
- |             |   |
|-------------|---|
| \$1,000,000 | Hired Auto and Non-Owned Auto Liability Each Occurrence |
| \$1,000,000 | Hired Auto and Non-Owned Auto Liability Aggregate       |
- B.** Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A.** applies, **SECTION II – WHO IS AN INSURED** is deleted and replaced with the following:
1. Each of the following is an insured to the extent set forth below.
    - a. You.
    - b. Any other person using a “hired auto” with your permission.
    - c. With respect to a “non-owned auto”, any partner or “executive officer” of yours, but only while such “non-owned auto” is being used in your business.
    - d. Any other person or organization, but only with respect to their liability because of acts or omissions of an insured under paragraphs **a.**, **b.** or **c.** above.
  2. None of the following is an insured:
    - a. Any partner or “executive officer” with respect to any “auto” owned by such partner or officer or a member of his or her household;
    - b. The owner or lessee (of whom you are a sub-lessee) of a “hired auto” or the owner of a “non-owned auto” or any agent or “employee” of any such owner or lessee; or
    - c. Any person or organization with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.
- C. SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, is amended by the addition of the following:
- Hired Auto and Non-Owned Auto Liability: The insurance provided under **COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, shall apply to “bodily injury” and “property damage” arising out of the:
1. maintenance or use of a “hired auto” by you or your “employees” in the course of your business; or
  2. use of a “non-owned auto” by any person other than you in the course of your business.
- D.** Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, the definition of “insured contract” in **SECTION VI – DEFINITIONS**, is deleted and replaced with the following:

This endorsement effective 3/1/2023  
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 by Landmark American Insurance Company

Endorsement No.: 08

"Insured contract" means that part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

- E. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, **SECTION V – DEFINITIONS** is amended by the addition of the following:

"Hired auto" means any "auto" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your "employees", your partners, your "executive officers", or "volunteer workers", or members of their households.

"Non-owned auto" means any "auto" you do not own, lease, hire, rent or borrow which is used in connection with your business. This includes "autos" owned by your "employees", your partners, your "executive officers", or "volunteer workers", or members of their households, but only while used in your business.

- F. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, subparagraph **g.** of paragraph **2.**, **Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** (Section I – Coverages) is deleted and replaced as follows:

- g.** any "claim" based upon or arising out of "bodily injury" or "property damage" arising out of the ownership, maintenance, operation, use or entrustment to others or loading or unloading of:

- (1) any aircraft or watercraft owned or operated by or rented or loaned to any Insured; or
- (2) any other aircraft or watercraft operated by any person in the course of his/her employment or activities on behalf of the Named Insured.

- G. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, subparagraph **j.** of paragraph **2.**, **Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** (Section I – Coverages) is deleted and replaced as follows:

- j.** any "claim" based upon or arising out of "property damage" to:

- (1) property owned or being transported by or rented or loaned to the Insured; or
- (2) property in the care, custody or control of the Insured.

- H. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, subparagraph **c.** of paragraph **2.**, **EXCLUSIONS OF COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** (Section I – coverages) is deleted.

- I. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, **SECTION III – LIMITS OF INSURANCE** is amended by the addition of the following:

The Hired Auto and Non-Owned Auto Liability Each Occurrence limit shown in paragraph **A.** of this endorsement is the most we will pay for damages because of all "bodily injury" and "property damage" with respect to Hired Auto and Non-Owned Auto Liability arising out of any one "occurrence".

The Hired Auto and Non-Owned Auto Liability Aggregate limit shown in paragraph **A.** of this endorsement is the most we will pay because of all "bodily injury" and "property damage" with respect to all Hired Auto and Non-Owned Auto Liability.

- J. Paragraph **2.** of **SECTION III – LIMITS OF INSURANCE** is deleted and replaced by the following:

- 2.** The General Aggregate Limit is the most we will pay for the sum of:

- a.** Damages under Coverage **A** including Hired Auto and Non-Owned Auto Liability, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- b.** Damages under Coverage **B.**

- K. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, paragraph **4.** **Other Insurance** in **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted and replaced with the following:

This insurance is excess over any primary insurance covering any "hired auto" or any "non-owned auto".

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **MINIMUM RETAINED PREMIUM**

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This endorsement modifies insurance provided under the following:

### **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE**

In the event of cancellation of this policy by the Insured, return premium shall be computed at .90 of the pro rata unearned policy premium, subject however to a retention by the company of not less than \$5,625.00.

Nothing in this endorsement is deemed to affect the Company's cancellation rights which remain as indicated in the coverage form.

It is further agreed that return premium may be allowed on a pro rata basis if cancelled for non payment of premium or deductible, subject however to retention by the company of the minimum retained premium as shown above.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 09



*This Endorsement Changes The Policy. Please Read It Carefully.*

## NUCLEAR ENERGY LIABILITY EXCLUSION

This endorsement modifies insurance provided under the following:

**MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE**

**This policy does not apply;**

- a. Under any Liability Coverage**, to bodily injury or property damage;
  - (1) with respect to which an Insured under the policy is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Associates of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;
- b. Under any Medical Payments Coverage** or any Supplemental Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization;
- c. Under any Liability Coverage** to bodily injury or property damage resulting from the hazardous properties of nuclear material, if:
  - (1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an insured, or (b) has been discharged or dispersed therefrom;
  - (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
  - (3) the bodily injury or property damage arises out of the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility but if such facility is located within the United States of America, its territories or possessions, or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat;
- d. As used in this Endorsement:**
  - (1) "Hazardous properties" include radioactive, toxic, or explosive properties;
  - (2) "Nuclear material" means source material, special nuclear material or byproduct material;
  - (3) "Source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
  - (4) "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor,

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
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by Landmark American Insurance Company

Endorsement No.: 10

- (5) "Waste" means any waste material (a) containing byproduct material and (b) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (6), (a) or (b) thereof;
- (6) "Nuclear facility" means:
  - (a) any nuclear reactor;
  - (b) any equipment or device designed or used for (i) separating the isotopes of uranium or plutonium, (ii) processing or utilizing spent fuel, or (iii) handling, processing, or packaging waste;
  - (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste; and includes the site on which any of the foregoing is located, all operations conducted on such site, and all premises used for such operations;
- (7) "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (8) "Property damage" includes all forms of radioactive contamination of property.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## OPIOID AND CONTROLLED SUBSTANCE EXCLUSION

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This endorsement modifies insurance provided under the following:

### All Coverages without Limitation

In consideration of the premium charged, it is agreed that this Policy will not be triggered or apply and will provide no coverage for indemnity, defense, supplemental or any other exposure where **Claims**, suits, occurrences or demands of any sort, without limitation, against any Insured are:

1. Based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
  - a. Any actual or alleged abuse, misuse, illicit use, overuse, addiction, dependency, unlawful distribution, or diversion of any **Controlled Substance**;
  - b. Any supervision, instruction, training, education, recommendation, or guideline given, or which should have been given, in connection with any **Controlled Substance**; or
  - c. Inadequate or inaccurate evaluation, control or reporting of, or the failure to evaluate, control or report, the conduct or suspected conduct described in paragraph 1.a. above.
2. Brought by or on behalf of any state, municipality or other governmental entity or agency seeking damages, fines, penalties or any other type of relief, whether monetary or not, arising from or in any way related to any Insured manufacturing, selling, distributing, or dispensing **Controlled Substances**.

For the purposes of this exclusion, **Controlled Substances** shall mean:

- a. any opioid or narcotic drug, narcotic medication, or narcotic substance of any type, nature or kind, including, but not limited to, buprenorphine, codeine, fentanyl, hydrocodone, morphine, oxymorphone, tapentadol, oxycontin, hydromorphone, medperidine, methadone, oxycodone, or naloxone;
- b. any substance that is a controlled substance defined by or included in the Schedules of the Controlled Substance Act of the United States of America (21 U.S.C. § 801 et seq.) or any other judicial, statutory, regulatory or other legal measure of any nation, province, state, municipality or other governmental division or subdivision; or
- c. any substance that is in the future labelled or determined to be any of the substances described in a. or b. of this definition.

This exclusion applies even if the **Claims** or suits against any Insured allege negligence, including but not limited to negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by any Insured.

This exclusion also applies to any **Claim** or suit by or on behalf of any individual or entity seeking certification at any time as a class action, whether or not such action is actually certified, arising from or in any way related to any Insured manufacturing, selling, distributing, or dispensing **Controlled Substances**.

However, this exclusion shall not apply to any **Claim** by or on behalf of a patient, arising out of an actual or alleged negligent act, error or omission by the Insured in the prescribing, administering, or dispensing of a **Controlled Substance** for its intended use, or in providing counseling or treatment related to any **Controlled Substance**.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 11

*This Endorsement Changes The Policy. Please Read It Carefully.*

## PENNSYLVANIA – NOTICE OF CANCELLATION AND NON-RENEWAL AMENDMENT

This endorsement modifies insurance provided under the following:

### MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE

**The Notice of Cancellation and non-renewal clause as contained in this policy is deleted and replaced as follows:**

The Named Insured may cancel this policy by mailing or delivering to the Company advance notice of cancellation.

The Company may cancel this policy by:

**A. CANCELLATION OF POLICIES IN EFFECT FOR SIXTY (60) DAYS OR LESS:**

If this policy has been in effect for sixty (60) days or less, the Company may cancel this policy for any reason, by mailing thirty (30) days advance notice of cancellation to the Named Insured.

**B. CANCELLATION OF POLICIES IN EFFECT FOR MORE THAN SIXTY (60) DAYS:**

If this policy has been in effect more than sixty (60) days or more, or is a renewal policy to Landmark American Insurance Company, the Company may cancel this policy only for one or more of the following reasons by mailing the following number of day advance notice to the Named Insured:

REASON FOR CANCELLATION	NUMBER OF DAYS ADVANCE NOTICE TO BE PROVIDED NAMED INSURED
Non-payment of premium (failure to pay a premium when due)	Fifteen (15) days
If the Named Insured makes a material misrepresentation that effects the insurability of risk	Fifteen (15) days
A substantial change in the risk covered by this policy	Sixty (60) days
If the Company loses its reinsurance for this policy	Sixty (60) days
If the Named Insured does not comply with policy terms, conditions or duties	Sixty (60) days
Any other reason approved the by Insurance Commissioner	Sixty (60) days

**This policy may also be cancelled from inception upon discovery that the policy was obtained through fraudulent statements, omissions, or concealment of facts material to the acceptance of the risk or to the hazard assumed by the Company**

**C. NOTICE OF NON-RENEWAL:**

In the event that the Company decides to non-renew this policy, The Company will mail at least sixty (60)

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 12



days advance written notice of non-renewal to the Named Insured.

D. NOTICE OF INCREASE IN PREMIUM – RENEWAL:

If the Company offers renewal terms with an increase in premium, the Company will provide the Named Insured with thirty (30) days advance notice.

The cancellation or non-renewal notice will be mailed via registered or first class mail to the Named Insured at the mailing address stated in the Declarations. The cancellation or non-renewal notice will state the effective date of the cancellation as well as the reason(s) for cancellation or non-renewal and the policy will terminate on that date.

If coverage is cancelled by the Company, the earned premium shall be computed pro-rata. If coverage is cancelled by the Insured, the earned premium shall be computed short rate.

All other terms and conditions of this policy remain unchanged.

## ***IMPORTANT NOTICE***

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### **PENNSYLVANIA SURPLUS LINES DISCLOSURE NOTICE**

The insurer which has issued this insurance is not licensed by the Pennsylvania Insurance Department and is subject to limited regulation. This insurance is NOT covered by the Pennsylvania Insurance Guaranty Association.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **SERVICE OF SUIT**

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This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

In the event of our failure to pay any amount claimed to be due, we, at your request, will submit to the jurisdiction of any court of competent jurisdiction within the United States of America. Nothing in this condition constitutes or should be understood to constitute a waiver of our rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court or seek a transfer of a case to another Court as permitted by the laws of the United States or of any state in the United States, moreover, this endorsement is not an agreement that the law of a particular jurisdiction applies to any dispute under the policy.

Service of process in such suit may be made upon the Senior Claims Officer of RSUI Group, Inc. 945 East Paces Ferry Road, Suite 1800, Atlanta, GA 30326-1160, or his designee. In any suit instituted against any one of them upon this contract, we will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above named is authorized and directed to accept service of process on our behalf in any such suit and/or upon your request to give a written undertaking to you that we will enter a general appearance upon our behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America, which makes provision therefore, we hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for the purpose in the statute, or his successor or successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by you or on your behalf or any beneficiary hereunder arising out of this contract of insurance, and we hereby designate the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

All other terms and conditions of the policy remain unchanged

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 14

### **State Fraud Statements**

(Signature Required for New York Only)

#### **ARKANSAS, LOUISIANA, RHODE ISLAND, TEXAS AND WEST VIRGINIA FRAUD STATEMENT**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

#### **ALASKA FRAUD STATEMENT**

A person who knowingly and with intent to injure, defraud, or deceive an insurance company files a claim containing false, incomplete, or misleading information may be prosecuted under state law.

#### **ALABAMA FRAUD STATEMENT**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.

#### **ARIZONA FRAUD STATEMENT**

For your protection Arizona law requires the following statement to appear on this form. Any person who knowingly presents a false or fraudulent claim for payment of a loss is subject to criminal and civil penalties.

#### **CALIFORNIA FRAUD STATEMENT**

For your protection, California law requires that you be made aware of the following: Any person who knowingly presents false or fraudulent information to obtain or amend insurance coverage or to make a claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

#### **COLORADO FRAUD STATEMENT**

It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

#### **DELAWARE FRAUD STATEMENT**

Any person who knowingly, and with intent to injure, defraud or deceive any insurer, files a statement of claim containing any false, incomplete or misleading information is guilty of a felony.

#### **DISTRICT OF COLUMBIA FRAUD STATEMENT**

**WARNING:** It is a crime to provide false, or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

#### **FLORIDA FRAUD STATEMENT**

Any person who knowingly and with intent to injure, defraud or deceive any insurer, files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.



#### **HAWAII FRAUD STATEMENT**

For your protection, Hawaii law requires you to be informed that any person who presents a fraudulent claim for payment of a loss or benefit is guilty of a crime punishable by fines or imprisonment, or both.

#### **IDAHO FRAUD STATEMENT**

Any person who knowingly, and with intent to defraud or deceive any insurance company, files a statement of claim containing any false, incomplete or misleading information is guilty of a felony.

#### **INDIANA FRAUD STATEMENT**

Any person who knowingly and with intent to defraud an insurer files a statement of claim containing any false, incomplete, or misleading information commits a felony.

#### **KANSAS FRAUD STATEMENT**

An act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written, electronic, electronic impulse, facsimile, magnetic, oral, or telephonic communication or statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

#### **KENTUCKY FRAUD STATEMENT**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.

#### **MAINE FRAUD STATEMENT**

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or a denial of insurance benefits.

#### **MARYLAND FRAUD STATEMENT**

Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

#### **MINNESOTA FRAUD STATEMENT**

Any person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

#### **NEW HAMPSHIRE FRAUD STATEMENT**

Any person who, with a purpose to injure, defraud or deceive any insurance company, files a statement of claim containing any false, incomplete or misleading information is subject to prosecution and punishment for insurance fraud, as provided in RSA 638:20.

#### **NEW JERSEY FRAUD STATEMENT**

Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.

#### **NEW MEXICO FRAUD STATEMENT**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

#### **OHIO FRAUD STATEMENT**

Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

#### **OKLAHOMA FRAUD STATEMENT**

**WARNING:** Any person who knowingly and with intent to injure, defraud, or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

#### **OREGON FRAUD STATEMENT**

Any person who knowingly files a claim containing a false or deceptive statement for payment of a loss or benefit or knowingly presents materially false information in an application for insurance may be guilty of a crime and may be subject to fines and confinement in prison.

#### **PENNSYLVANIA FRAUD STATEMENT**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

#### **PUERTO RICO FRAUD STATEMENT**

Any person who knowingly and with the intention of defrauding presents false information in an insurance application, or presents, helps, or causes the presentation of a fraudulent claim for the payment of a loss or any other benefit, or presents more than one claim for the same damage or loss, shall incur a felony and, upon conviction, shall be sanctioned for each violation by a fine of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000), or a fixed term of imprisonment for three (3) years, or both penalties. Should aggravating circumstances be present, the penalty thus established may be increased to a maximum of five (5) years, if extenuating circumstances are present, it may be reduced to a minimum of two (2) years.

#### **TENNESSEE, VIRGINIA, AND WASHINGTON FRAUD STATEMENT**

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

SIGNATURE REQUIRED – NEW YORK ONLY

NEW YORK FRAUD STATEMENT

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

LHC801468  
Policy Number

NURSELECT LLC  
Insured/Applicant/Claimant (Legal Entity)

By (Authorized Representative) - Printed Name

By (Authorized Representative) - Signature

Title

Date

*This Endorsement Changes The Policy. Please Read It Carefully.*

## SUPPLEMENTARY COVERAGES ENDORSEMENT

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This endorsement modifies insurance provided under the following:

### MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD

In consideration of the premium charged, it is agreed that:

**1. Part I. Insuring Agreements, H. Supplementary Coverages** is amended to include:

1. The Company will pay **Damages** or **Claims Expenses** as a result of **Claims** arising out of an insured's professional services performed during the rendering of emergency medical treatment without remuneration, at the scene of an accident, medical crisis or disaster. This coverage is subject to a sub-Limit of Liability in an aggregate amount of \$25,000. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.
2. The Company will reimburse the Insured for **Evacuation Expenses** actually incurred in connection with an **Evacuation** which first takes place during the **Policy Period** and which is reported to the Company as soon as practicable, but in no event later than thirty (30) days after you first incur **Evacuation Expenses** for which coverage will be requested. You are not required to obtain the Company's prior written approval or consent before incurring any **Evacuation Expenses**.

This coverage is subject to a sub-Limit of Liability in an aggregate amount of \$25,000. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.

No coverage will be available for **Evacuation Expenses** arising out of any:

- a. strike or bomb threat, unless the **Evacuation** was ordered by a civil authority;
  - b. false fire alarm or planned evacuation drill;
  - c. vacating of one or more residents because of their individual medical condition;
  - d. nuclear reaction, radiation, or any radioactive contamination, however caused;
  - e. seizure or destruction of property by order of a governmental authority, provided that this exclusion shall not apply to an order of evacuation by a governmental authority due to a condition described above; or
  - f. war, including undeclared or civil war, warlike action by a military force, insurrection, rebellion, or revolution.
3. The Company will pay up to \$500 for loss that is due to **Property Damage** to your patient's tangible property if resulting directly from or during the performance of professional services as described in the Declarations. The Company will make these payments regardless of fault. These payments will not exceed \$5,000 for all such losses resulting from all professional services, regardless of the number of patients whose tangible property is injured. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.
  4. The Company will reimburse the Insured for **Legal/Media Expenses** actually incurred in connection with a **Legal Defense Proceeding** first brought against an Insured and reported during the **Policy Period** that occurred after the Policy's **Retroactive Date** and that arises out of the Insured's performance of professional services as described in the Declarations.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 16

This coverage is subject to a sub-Limit of Liability in an aggregate amount of \$25,000. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.

2. The following Definitions are in addition to Policy Definitions contained in **Part III.** and apply only to this endorsement:

**A. Evacuation** means the removal of all or the majority of patients from one or more of your locations or facilities in response to an actual or threatened, natural or man-made condition that is unexpected and unforeseen and causes the patients of such location or facility to be in imminent danger of loss of life or physical harm.

Such condition must be in the form of an emergency or sudden crisis requiring immediate action, and not the result of a latent or hidden condition at the location or facility.

**B. Evacuation Expenses** means reasonable costs and expenses actually incurred by you in connection with the **Evacuation**, including the costs associated with transporting and lodging patients who have been evacuated. **Evacuation Expenses** shall not include any remuneration, salaries, overhead, fees, or benefit expenses of the Named Insured or any Insured.

**C. Property Damage** means:

1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
2. Loss of use of tangible property of others that is not physically injured. All such loss of use shall be deemed to occur at the time of the accident, including continuous or repeated exposure to substantially the same general harmful conditions that caused it.

For the purposes of this coverage, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**D. Legal Defense Proceeding** means:

1. A hearing or disciplinary action against an Insured before a state or other licensing board or governmental regulatory body;
2. A civil or criminal proceeding in which the Insured is not a defendant but has been ordered to offer deposition testimony regarding treatment rendered to a patient;
3. A civil or criminal proceeding in which the Insured is not a party but has received a subpoena for record production regarding treatment rendered to a patient; or
4. A HIPAA proceeding.

**E. Legal/Media Expenses** means reasonable fees and costs of attorneys, experts and consultants incurred by the Insured in the investigation and defense of a **Legal Defense Proceeding**. **Legal/Media Expenses** also includes reasonable costs incurred by the Insured in the management of public relations with respect to a **Legal Defense Proceeding**, including reasonable fees and costs of third-party media consultants. Solely with respect to a HIPAA proceeding, **Legal/Media Expenses** shall include civil fines and penalties resulting from any HIPAA proceeding. **Legal/Media Expenses** shall not include any remuneration, salaries, overhead, fees, loss of earning reimbursement or benefit expenses of an Insured.

All other terms and conditions of this policy remain unchanged.



*This Endorsement Changes The Policy. Please Read It Carefully.*

## **VIOLATION OF CONSUMER PROTECTION LAWS EXCLUSION**

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This endorsement modifies insurance provided under the following:

### **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE**

This insurance does not apply to any **Claim** based upon or arising directly, or indirectly, out of any actual or alleged violation of any federal, state or local consumer protection law(s), statute, ordinance or regulation including, but not limited to, the following:

1. The False Claims Act (FCA), including any amendment of or addition to such law;
2. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), including any amendment of or addition to such law;
3. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA);
4. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
5. The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act), including any amendment of or addition to such law;
6. That addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information;
7. Any communication, distribution, publication, sending or transmission via telephone, telephone facsimile machine, computer or other telephonic or electronic devices, including claims asserted under the common law;
8. **Claims** brought by any state or federal government agency, or any person or entity on their behalf, including qui tam **claims**, seeking to enforce any consumer protection law; or
9. Actual or alleged violation of any laws, regulations or guidelines relating to the accessibility of the Insured's website.
10. Any biometric privacy law or any such similar law or statute anywhere in the world that governs or relates to the collection, use, safeguarding, handling, storage, retention or destruction of biometric identifiers, biometric data or biometric information of any kind, including but not limited to retina or iris scans, fingerprints, voiceprints, or scans of hand or face geometry.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 17

**RSUI Group, Inc.**  
945 East Paces Ferry Road, Suite 1800  
Atlanta, GA 30326-1160

**HOME HEALTH CARE, NURSE REGISTRY, INFUSION  
THERAPY OR OTHER MEDICAL STAFFING SUPPLEMENTAL  
APPLICATION**

1. Name of Applicant: \_\_\_\_\_
2. Type of Firm (check all that apply): ☐ Home Health Care ☐ Infusion Therapy ☐ Visiting Nurse Agency  
☐ Nurse Registry ☐ Other Medical Staffing (specify): \_\_\_\_\_
3. Date Established: \_\_\_\_\_
4. Location(s) where services are provided (total must be 100%) \_\_\_\_\_% Home \_\_\_\_\_% Hospice  
\_\_\_\_\_% Nursing Home \_\_\_\_\_% Assisted Living Facility \_\_\_\_\_% Hospital \_\_\_\_\_% Clinic/Doctors Office  
\_\_\_\_\_% Adult Day Care \_\_\_\_\_% Correctional Facility \_\_\_\_\_% Other Facility (specify): \_\_\_\_\_
5. Do you provide any of the following services:  
Pediatric Care? Describe: \_\_\_\_\_ Yes ☐ No ☐  
Pediatric Ventilator/Trach Care? Describe: \_\_\_\_\_ Yes ☐ No ☐  
Live-In Care? Describe: \_\_\_\_\_ Yes ☐ No ☐
6. Employees/Independent Contractors – Annual Staffing:  

<u>Type of Employee/Independent Contractor</u>	<u>No. Full-Time</u>	<u>No. Part-Time</u>	<u>Billable hours Per Year</u>
Employed Registered Nurse	_____	_____	_____
Contracted Registered Nurse	_____	_____	_____
Employed Licensed Practical Nurse	_____	_____	_____
Contracted Licensed Practical Nurse	_____	_____	_____
Employed Certified Nurse Assistant	_____	_____	_____
Contracted Certified Nurse Assistant	_____	_____	_____
Employed Nurse Practitioner/Physician Assistant	_____	_____	_____
Contracted Nurse Practitioner/Physician Assistant	_____	_____	_____
Employed Companion/Home Health Aide	_____	_____	_____
Contracted Companion/Home Health Aide	_____	_____	_____
Employed Social Worker	_____	_____	_____
Contracted Social Worker	_____	_____	_____
Employed Physical Therapist	_____	_____	_____
Contracted Physical Therapist	_____	_____	_____
Employed Other Medical (specify)	_____	_____	_____
Contracted Other Medical (specify)	_____	_____	_____
7. Please provide a copy of the applicant's credentialing procedures and background check procedures.
8. Are drug, alcohol and sexual abuse screening or testing conducted? (Please provide full details) Yes ☐ No ☐

9. Are criminal background checks conducted in all states? (Please provide full details) Yes ☐ No ☐

10. Anticipated payroll amount for the next 12 months: \_\_\_\_\_

11. Does the Applicant warrant that all employed and contracted physicians, surgeons and dentists Yes ☐ No ☐  
maintain their own medical malpractice professional liability insurance coverage and confirm with a certificate of insurance or  
declarations page? If No, please provide details.

### REPRESENTATIONS

I understand that the information submitted herein becomes a part of my professional liability application and is subject to the same warranty and conditions.

Must be signed and dated by an Owner, Partner or Principal as duly authorized on behalf of the Applicant.

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Signature of the Applicant

Title

Date

**RSUI Group, Inc.**  
945 East Paces Ferry Road, Suite 1800  
Atlanta, GA 30326-1160

**RENEWAL APPLICATION FOR MISCELLANEOUS  
MEDICAL PROFESSIONAL LIABILITY INSURANCE  
(CLAIMS-MADE FORM)**

**General Applicant Information**

1. Name of Applicant: \_\_\_\_\_
2. Any changes in Address? ☐ Yes ☐ No (if yes, please complete the below)  
Principal Address: \_\_\_\_\_
3. City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Website: \_\_\_\_\_

**Applicant Practice**

4. Any change in the applicant's professional activities for which coverage is desired? (if yes, please describe below) ☐ Yes ☐ No  
\_\_\_\_\_
5. Does the Applicant provide any Correctional Medicine Services? ☐ Yes ☐ No
6. In what states is the Applicant registered and licensed to practice? \_\_\_\_\_
7. During the past 12 months, has the applicant acquired or been acquired by another company? ☐ Yes ☐ No  
If yes please describe below  
\_\_\_\_\_
8. State sources and amounts of total revenue:
- | Source                      | Amount Last Policy Year | This Policy Year |
|-----------------------------|-------------------------|------------------|
| a. Charitable Contributions | \$ _____                | \$ _____         |
| b. Government Funding       | \$ _____                | \$ _____         |
| c. Fee for Services         | \$ _____                | \$ _____         |
| d. _____                    | \$ _____                | \$ _____         |
| e. _____                    | \$ _____                | \$ _____         |
| <b>TOTAL GROSS REVENUE:</b> | <b>\$ _____</b>         | <b>\$ _____</b>  |
9. Number of patient encounters last 12 months (\_\_\_\_\_) and/or patient tests carried out (\_\_\_\_).  
(NOTE: "Patient encounters" refers to number of *visits* – not number of patients.)
10. Number of estimated patient encounters the next 12 months (\_\_\_\_\_) and/or patient tests carried out (\_\_\_\_).  
(NOTE: "Patient encounters" refers to number of *visits* – not number of patients.)

11. If applicant has a training school, complete the following.

Specify profession for which students are being trained	Max No. of students per session	No. of sessions per year	% of time involved in clinical setting	Number of students	Qualifications of faculty (eg. MD, RN, PhD)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

12. List the number and type of employees, volunteers or independent contractors, their billable hours, and whether or not they carry individual medical malpractice coverage for their services on behalf of the entity.

	Employees	Volunteers	Independent Contractors	Billable Hours	Insured on own Med Mal Policy
Aestheticians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Chiropractors	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Dieticians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
EMT's	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Laboratory Technicians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse, Aides	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse Anesthetists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurses, Licensed Practical	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse Midwives	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse Practitioner	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse, Registered	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Opticians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Optometrists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Paramedics	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Perfusionists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Pharmacists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Pharmacy Technicians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physical/Occupational/Speech Therapists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physical/Occupational/Speech Therapist Assistants	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physician's Assistants	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physicians – Minor Surgery	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physicians – No Surgery	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Psychologists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Respiratory Therapists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Social Workers	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Other: _____	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No



13. Does the applicant maintain any beds for overnight occupancy? (If yes, total number): \_\_\_\_\_

What is the average length of stay? \_\_\_\_\_

14. Does the Applicant warrant that all employed and contracted physicians, surgeons and dentists maintain their own medical malpractice professional liability insurance coverage and confirm with a certificate of insurance or declarations page? ☐ Yes ☐ No  
If no, please attached explanation.

### Applicant History

15. Is the applicant currently insured under a Commercial General Liability Policy? ☐ Yes ☐ No  
If yes, please give details:

Insurance Company	Type of Coverage	Limits BI	Limits PD	From	To
_____	_____	_____	_____	_____	_____

16. In the past twelve (12) months, has any professional liability claim or suit been made against the Applicant or any of its predecessor firms? Please complete the **Claim Supplement** and provide currently valued company loss runs ☐ Yes ☐ No  
If "Yes", how many? \_\_\_\_\_

17. Have all matters in Question 15. been reported to RSUI or to the Applicant's former or current insurer(s) or to the former Insurer of any predecessor firm or former insurer of a current member of the Firm? ☐ Yes ☐ No

18. Has any principal, owner, partner or employee for whom coverage is sought been the subject of a disciplinary complaint made to any court, administrative agency or regulatory body? (If "yes", provide full details and documentation) ☐ Yes ☐ No

### Representations

The Applicant declares that the above statement and representations are true and correct, and that no facts have been suppressed or misstated. All written statements and materials furnished to the Company, in conjunction with this application will be incorporated by reference into this application and made part hereof.

This application does not bind the Applicant to buy, or the Company to issue the insurance, but it is agreed that this form shall be the basis of the contract should a policy be issued, and it will be attached to and made part of the policy. The undersigned Applicant declares that if the information supplied on this application changes between the dates of this application and the time when the policy is issued, the Applicant will immediately notify the company of such changes, and the Company may withdraw or modify any outstanding quotations and/or authorization or agreement to bind the insurance.

\_\_\_\_\_  
Signature of the Insured, Owner, Partner or Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Producer

Your policy has been signed on our behalf by our President and by our Secretary. However, your policy will not be binding on us unless it is also countersigned by one of our duly authorized agents.

A handwritten signature in black ink, appearing to read "Andrew J. Whittington". The signature is fluid and cursive, with a large, stylized "W" at the end.

President

**RSUI Indemnity Company**  
**Landmark American Insurance Company**  
**Covington Specialty Insurance Company**

A handwritten signature in black ink, appearing to read "Ronald E. Hinkle". The signature is cursive and somewhat stylized, with a long horizontal line extending from the end.

Secretary

**RSUI Indemnity Company**  
**Landmark American Insurance Company**  
**Covington Specialty Insurance Company**



*A member of Alleghany Insurance Holdings LLC*

# EXHIBIT 4

**SAXTON & STUMP**

Collin T. Keyser, Esquire  
 Attorney I.D. No. 307505  
 Kimberly A. Selemba, Esquire  
 Attorney I.D. No. 93535  
 280 Granite Run Drive, Suite 300  
 Lancaster, PA 17601  
 Phone: (717) 556-1000  
[ctk@saxtonstump.com](mailto:ctk@saxtonstump.com)  
[kas@saxtonstump.com](mailto:kas@saxtonstump.com)

*Attorneys for Defendants, Rehabilitation Center  
 at Brethren Village, LLC, Brethren Village,  
 Brethren Village Realty, LLC, and Lori  
 Schoener, NHA*

ENTERED AND FILED  
 PROTHONOTARY'S OFFICE  
 No. CI-22-04128  
 LANCASTER, PA  
 \*\*\*Electronically Filed\*\*\*  
 Jun 13 2023 02:40PM  
 Ryan McMinn

BRENDA L. KLING, individually and as	:	IN THE COURT OF COMMON PLEAS
Administratrix of the Estate of	:	OF LANCASTER COUNTY,
GERALDINE E. WIGGINS,	:	PENNSYLVANIA
Plaintiff	:	
v.	:	
	:	NO: CI-22-04128
REHABILITATION CENTER AT	:	
BRETHREN VILLAGE, LLC,	:	MedMal
BRETHREN VILLAGE, BRETHREN	:	
VILLAGE REALTY, LLC, LORI	:	
SCHOENER, NHA, and JOHN DOES1-	:	
4	:	
Defendants,	:	
v.	:	
NURSELECT, LLC,	:	
Additional	:	
Defendant.	:	

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.



No. CI-22-04128

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lancaster Bar Association  
Lawyer Referral Service  
Telephone: 717-393-0737

No. CI-22-04128

BRENDA L. KLING, individually and as : IN THE COURT OF COMMON PLEAS  
 Administratrix of the Estate of : OF LANCASTER COUNTY,  
 GERALDINE E. WIGGINS, : PENNSYLVANIA

Plaintiff

NO: CI-22-04128

v.

MedMal

REHABILITATION CENTER AT :  
 BRETHREN VILLAGE, LLC, :  
 BRETHREN VILLAGE, BRETHREN :  
 VILLAGE REALTY, LLC, LORI :  
 SCHOENER, NHA, and JOHN DOES1- :  
 4 :

Defendants,

v.

NURSELECT, LLC,

Additional :  
 Defendant. :

**JOINDER COMPLAINT OF DEFENDANT, BRETHREN VILLAGE, AGAINST  
ADDITIONAL DEFENDANT, NURSELECT, LLC**

Defendant, Brethren Village, ("Joining Defendant"), by and through counsel, Saxton & Stump, files this Third-Party Joinder Complaint against Additional Defendant, NurSelect, LLC ("Additional Defendant" or "NurSelect"), pursuant to Pennsylvania Rule of Civil Procedure 2252 and, in support thereof avers as follows:

1. Plaintiff, Brenda L. Kling, has filed a Complaint in this matter, asserting claims for negligence, vicarious liability, corporate negligence, survival, wrongful death, and breach of fiduciary duty, arising out of skilled nursing care provided to resident, Geraldine E. Wiggins ("Ms. Wiggins"), at Rehabilitation Center at Brethren Village, LLC ("Brethren Village"). A copy of Plaintiff's Fourth Amended Complaint is attached hereto, without adoption, as "Exhibit A."



No. CI-22-04128

2. In the Fourth Amended Complaint, Plaintiff alleges that Defendants were negligent in relation to a fall that Ms. Wiggins had as she attempted to walk from the bathroom to her chair.

3. Joining Defendant hereby incorporates the allegations of Plaintiff's Fourth Amended Complaint without admitting or denying the substance of those allegations.

**JOINDER DEFENDANT**

4. Additional Defendant NurSelect, LLC, is a health care employment agency with a principal place of business at 630 Freedom Business Center Drive, King of Prussia, PA, 19406.

5. At the time of the alleged incident, NurSelect provided supplemental staffing to Brethren Village, pursuant to a September 22, 2020 written contract titled "Supplemental Staffing Agreement". A copy of the Supplemental Staffing Agreement is attached hereto as "Exhibit B."

**FACTUAL BACKGROUND**

6. As set forth above, Joining Defendant incorporates by reference the allegations in Plaintiff's Fourth Amended Complaint, without admitting or denying the substance of those allegations.

7. Plaintiff claims that, on or about the morning of May 12, 2021, Ms. Wiggins fell while walking from her bathroom to her chair unattended, resulting in a laceration and a quarter-sized hematoma.

8. On August 28, 2021, Ms. Wiggins passed away; Plaintiff alleges that "failure to thrive" was listed as the cause of death. 4th Am. Compl. ¶ 61.

9. Plaintiff alleges that the injuries Ms. Wiggins suffered from her fall contributed to her death over 3-months later. 4th Am. Compl. ¶ 63.

No. CI-22-04128

10. Ms. Wiggins was in the care of Ayanna McDowell, CNA, at the time of her fall.

11. Ms. McDowell was employed as an agency nurse for NurSelect at the time of the incident. She was not employed by Brethren Village.

12. The obligations of Additional Defendant, NurSelect, LLC, under the aforementioned written Supplemental Staffing Agreement, include, but are not limited to, the timely provision of licensed and certified nursing personnel in accordance with federal, state, and local laws, rules ordinances and regulations and meeting the highest professional standards and principles. Exhibit B, at Arts. 1.1, 1.2.

13. The Agreement expressly provides that NurSelect personnel furnished to Brethren Village “shall not be considered employees or agents [Brethren Village] but instead shall be considered leased employees of NurSelect.” Exhibit B, at Art 3.1.

14. Pursuant to the Supplemental Staffing Agreement, NurSelect agreed to “indemnify and hold harmless [Brethren Village] from and against any and all claims, demands, actions, settlements, or judgments, including reasonable attorneys’ fees and litigation expenses, arising from. . . NurSelect Personnel’s provision of the Services where such claims, demands actions, settlements, or judgments arise from the negligence or willful misconduct of NurSelect Personnel.” Exhibit B, at Art. 5.2.

**COUNT I**  
**NEGLIGENCE, INDEMNIFICATION AND CONTRIBUTION**

15. The foregoing paragraphs are incorporated herein by reference as if set forth herein at length.

16. Without admitting the averments of Plaintiff’s Fourth Amended Complaint, Additional Defendant, NurSelect, LLC, is solely liable to Plaintiff, jointly and severally liable with Joining Defendant, liable over Joining Defendant, or liable to Joining Defendant for



No. CI-22-04128

indemnification and/or contribution, for the claims asserted by Plaintiff, Brenda L. Kling, and for the injuries and damages alleged in the 4<sup>th</sup> Amended Complaint.

**WHEREFORE**, Joining Defendant Brethren Village demands judgment in its favor and against Additional Defendant, NurSelect, LLC. In the alternative, Joining Defendant Brethren Village demands that Additional Defendant, NurSelect, LLC, be held solely liable to Plaintiff, jointly and severally liable with Joining Defendant, liable over Joining Defendant, or liable to Joining Defendant for common law and contractual indemnification and/or contribution.

**COUNT II**  
**VICARIOUS LIABILITY, INDEMNIFICATION, AND CONTRIBUTION**

17. The foregoing paragraphs are incorporated herein by reference as if set forth herein at length.

18. Without admitting the averments of Plaintiff's Fourth Amended Complaint, Additional Defendant, NurSelect, LLC, as the employer/principal of Ayanna McDowell, is vicariously liable to Plaintiff, jointly and severally liable with Joining Defendant, liable over Joining Defendant, or liable to Joining Defendant for indemnification and/or contribution, for the claims asserted by Plaintiff, Brenda L. Kling, and for the injuries and damages alleged in the 4<sup>th</sup> Amended Complaint.

**WHEREFORE**, Joining Defendant Brethren Village demands judgment in its favor and against Additional Defendant, NurSelect, LLC. In the alternative, Joining Defendant Brethren Village demands that Additional Defendant, NurSelect, LLC, be held vicariously liable to Plaintiff, jointly and severally liable with Joining Defendant, liable over Joining Defendant, or liable to Joining Defendant for indemnification and/or contribution.



No. CI-22-04128

**COUNT III**  
**CONTRACTUAL INDEMNIFICATION**

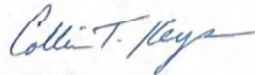
19. The foregoing paragraphs are incorporated herein by reference as if set forth herein at length.

20. Without admitting the averments of Plaintiff's Fourth Amended Complaint, Additional Defendant, NurSelect, LLC, pursuant to the Supplemental Staffing Agreement, is contractually obligated to indemnify and hold harmless Joining Defendant for any liabilities, damages, and expenses resulting from the claims asserted by Plaintiff.

**WHEREFORE**, Joining Defendant Brethren Village demands judgment in its favor and against Additional Defendant, NurSelect, LLC. In the alternative, Joining Defendant Brethren Village demands that Additional Defendant, NurSelect, LLC, be held contractually liable for indemnification for any liabilities, damages, and expenses resulting from the claims asserted by Plaintiff.

Respectfully submitted,

SAXTON & STUMP



Date: June 13, 2023

By: \_\_\_\_\_

Collin T. Keyser, Esquire  
Attorney I.D. No. 307505  
Kimberly A. Selemba, Esquire  
Attorney I.D. No. 93535  
280 Granite Run Drive, Suite 300  
Lancaster, PA 17601

No. CI-22-04128

Phone: (717) 556-1000

Fax: (717) 441-3810

[ctk@saxtonstump.com](mailto:ctk@saxtonstump.com)

[kas@saxtonstump.com](mailto:kas@saxtonstump.com)

*Attorneys for Defendants, Rehabilitation Center at  
Brethren Village, LLC, Brethren Village, Brethren  
Village Realty, LLC, and Lori Schoener, NHA*



**SAXTON & STUMP**

No. CI-22-04128

Collin T. Keyser, Esquire  
 Attorney I.D. No. 307505  
 Kimberly A. Selemba, Esquire  
 Attorney I.D. No. 93535  
 280 Granite Run Drive, Suite 300  
 Lancaster, PA 17601  
 Phone: (717) 556-1000  
[ctk@saxtonstump.com](mailto:ctk@saxtonstump.com)  
[kas@saxtonstump.com](mailto:kas@saxtonstump.com)

*Attorneys for Defendants, Rehabilitation Center  
 at Brethren Village, LLC, Brethren Village,  
 Brethren Village Realty, LLC, and Lori  
 Schoener, NHA*

BRENDA L. KING, individually and as : IN THE COURT OF COMMON PLEAS  
 Administratrix of the Estate of : OF LANCASTER COUNTY,  
 GERALDINE E. WIGGINS, : PENNSYLVANIA

Plaintiff

: NO: CI-22-04128

v.

: MedMal

REHABILITATION CENTER AT :  
 BRETHREN VILLAGE, LLC, :  
 BRETHREN VILLAGE, BRETHREN :  
 VILLAGE REALTY, LLC, LORI :  
 SCHOENER, NHA, and JOHN DOES1- :  
 4 :

Defendants,

v.

NURSELECT, LLC,

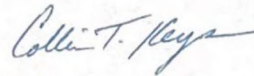
Additional  
 Defendant.

**CERTIFICATE OF SERVICE**

I, Collin T. Keyser, Esquire, certify that on this date, I served a certified true and correct copy of the foregoing Third-Party Joinder Complaint upon the following counsel and parties of record, via email and certified mail, addressed as follows:

No. CI-22-04128

Andrei Govorov, Esquire  
Rosenbaum & Associates, PC  
1818 Market Street, Suite 3200  
Philadelphia, PA 19103  
*(Attorney for Plaintiff)*  
*(via email)*



Date: June 13, 2023

By: \_\_\_\_\_  
Collin T. Keyser, Esquire



No. CI-22-04128

BRENDA L. KLING, individually and as : IN THE COURT OF COMMON PLEAS  
Administratrix of the Estate of : OF LANCASTER COUNTY,  
GERALDINE E. WIGGINS, : PENNSYLVANIA

Plaintiff

NO: CI-22-04128

v.

MedMal

REHABILITATION CENTER AT  
BRETHREN VILLAGE, LLC,  
BRETHREN VILLAGE, BRETHREN  
VILLAGE REALTY, LLC, LORI  
SCHOENER, NHA, and JOHN DOES1-  
4

Defendants,

v.

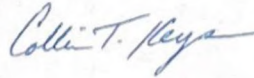
NURSELECT, LLC,

Additional  
Defendant.

**PUBLIC ACCESS POLICY CERTIFICATION**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

SAXTON & STUMP



Date: June 13, 2023

By: \_\_\_\_\_  
Collin T. Keyser, Esquire



## EXHIBIT A

ENTERED AND FILED  
PROTHONOTARY'S OFFICE  
LANCASTER, PA

\*\*\*Electronically Filed\*\*\*

Dec 22 2022 12:29PM

Ryan McMinn

ROSENBAUM & ASSOCIATES, P.C.  
BY: ANDREI GOVOROV, ESQUIRE  
Attorney ID No.: 209365  
1818 Market Street, Suite 3200  
Philadelphia, PA 19103  
(215) 569-0200  
[agovorov@rosenbaumfirm.com](mailto:agovorov@rosenbaumfirm.com)

MAJOR-JURY  
ASSESSMENT OF DAMAGES  
HEARING IS REQUIRED.  
JURY TRIAL DEMANDED

Attorney for Plaintiff

BRENDA L. KLING, ADMINISTRATRIX of the ESTATE OF GERALDINE E. WIGGINS deceased	:	LANCASTER COUNTY COURT OF COMMON PLEAS
	:	
	:	No.: CI-22-04128
vs.	:	
	:	FOURTH AMENDED COMPLAINT
REHABILITATION CENTER at BRETHREN VILLAGE, LLC; BRETHREN VILLAGE; BRETHREN VILLAGE REALTY, LLC; LORI SCHOENER, NHA; and JOHN DOES 1-4 (Fictitious Names)	:	

**CIVIL ACTION**  
**NOTICE**

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral & Information Service  
Lancaster County Bar Association  
28 E Orange Street  
Lancaster, PA 17602

**AVISO**

LE HAN DEMANDADO A USTED EN LA CORTE. SI USTED QUIERE DEFENDERSE DE ESTAS DEMANDAS EXPUESTAS EN LAS PAGINAS SIGUIENTES, USTED TIENE VIENTE (20) DIAS DE PLAZO AL PARTIR DE LA FECHA DE LA DEMANDA Y LA NOTIFICACION. HACE FALTA ASENTAR UNA COMPARENCIA ESCRITA O EN PERSONA O CON UN ABOGADO Y ENTREGAR A LA CORTE EN FORMA ESCRITA SUS DEFENSAS O SUS OBJECIONES A LAS DEMANDAS EN CONTRA DE SU PERSONA. SEA AVISADO QUE SI USTED NO SE DEFIENDE, LA CORTE TOMARA MEDIDAS Y PUEDE CONTINUAR LA DEMANDA EN CONTRA SUYA SIN PREVIO AVISO O NOTIFICACION. ADEMÁS, LA CORTE PUEDE DECIDIR A FAVOR DEL DEMANDANTE



Y REQUIERE QUE USTED CUMPLA CON TODAS LAS PROVISIONES DE ESTA DEMANDA. USTED PUEDE PERDER DINERO O SUS PROPIEDADES U OTROS DERECHOS IMPORTANTES PARA USTED. LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Servicio de referencia e información de abogados  
Colegio de Abogados del Condado de Lancaster  
28 E Calle Naranja  
Lancaster, Pensilvania 17602

ROSENBAUM & ASSOCIATES, P.C.  
 BY: ANDREI GOVOROV, ESQUIRE  
 Attorney ID No.: 209365  
 1818 Market Street, Suite 3200  
 Philadelphia, PA 19103  
 (215) 569-0200  
[agovorov@rosenbaumfirm.com](mailto:agovorov@rosenbaumfirm.com)

MAJOR-JURY  
 ASSESSMENT OF DAMAGES  
 HEARING IS REQUIRED.  
 JURY TRIAL DEMANDED

Attorney for Plaintiff

BRENDA L. KLING, ADMINISTRATRIX of the ESTATE OF GERALDINE E. WIGGINS: deceased	:	LANCASTER COUNTY COURT OF COMMON PLEAS
	:	No.: CI-22-04128
vs.	:	FOURTH AMENDED COMPLAINT
REHABILITATION CENTER at BRETHREN VILLAGE, LLC; BRETHREN VILLAGE; BRETHREN VILLAGE REALTY, LLC; LORI SCHOENER, NHA; and JOHN DOES 1-4 (Fictitious Names)	:	

#### **FOURTH AMENDED COMPLAINT**

(This Fourth Amended Complaint Includes a Medical Professional Liability Action)

Plaintiff, Brenda L. Kling, Administratrix of the Estate of Geraldine E. Wiggins, deceased, by and through their counsel, Rosenbaum & Associates, P.C., files this Fourth Amended Complaint in Civil Action, and aver as follows:

1. Plaintiff, Brenda L. Kling, Administratrix of the Estate of Geraldine E. Wiggins, deceased, is an adult individual and daughter of Decedent, Geraldine E. Wiggins, residing at 19 Verbena Drive, Lancaster, Pennsylvania 17062.

2. Decedent, Geraldine E. Wiggins, died intestate on August 28, 2021.

3. Plaintiff, Brenda L. Kling, were appointed Administratrix of the Estate of Geraldine E. Wiggins, deceased, by the Register of Wills of Lancaster County, on September 23, 2021, and in this capacity acts on behalf of the Estate, the beneficiaries of the Estate and the potential wrongful death beneficiaries.

4. At the time of her death, Decedent, Geraldine E. Wiggins, left surviving a daughter Brenda L. Kling, on whose behalf this claim is, in part, is filed.



5. Defendant, Rehabilitation Center Brethren Village, LLC, is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and was engaged in the business of owning, operating, managing and offering healthcare, medical services, rehabilitation and nursing care to the public at a rehabilitation and nursing home facility, Rehabilitation Center at Brethren Village, LLC, ("Brethren Village") 3001 Lititz Pike, Lancaster, Pennsylvania. Plaintiff is asserting a professional liability claim against this Defendant.

6. At all times material hereto, Defendant, Rehabilitation Center at Brethren Village, LLC, acted or failed to act by and through its agents, ostensible agents, servants, workmen, nurses, nurse's aides, and/or employees, physicians, the nursing home administrators and/or administrators responsible for formulating, adopting, monitoring and enforcing the policies, procedures and protocols of Brethren Village from the time Geraldine E. Wiggins was admitted to Brethren Village on April 13, 2021, including the physicians, nurses, nurses' aides, staff members and employees responsible for the care, supervision, treatment and safety of Geraldine E. Wiggins, starting on April 13, 2021, which includes those physicians, nurses, nurses' aides, staff and employees identified in the records and charts of Brethren Village, whose names cannot be discerned from the records but whose identities are known to and within the exclusive control of Defendants, as well as those physicians, nurses, nurses' aides, staff and employees whose names are not recorded in the records due to Defendants' failure to implement and utilize proper record-keeping and documentation procedures but whose identities are known to and within the exclusive control of Defendants, all of whom were then and there acting within the scope of their authority and in the course of their employment with Defendant, Rehabilitation Center at Brethren Village, LLC, and in furtherance of Defendant, Rehabilitation Center at Brethren Village, LLC's business and on behalf of Defendant, Rehabilitation Center at Brethren Village, LLC.

7. Defendant, Brethren Village, is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and was engaged in the business of owning, operating, managing and offering healthcare, medical services, rehabilitation and nursing care to the public at a rehabilitation and nursing home facility, Rehabilitation Center at Brethren Village, LLC, ("Brethren

Village”) 3001 Lititz Pike, Lancaster, Pennsylvania. Plaintiff is asserting a professional liability claim against this Defendant.

8. At all times material hereto, Defendant, Brethren Village, acted or failed to act by and through its agents, ostensible agents, servants, workmen, nurses, nurse’s aides, and/or employees, physicians, the nursing home administrators and/or administrators responsible for formulating, adopting, monitoring and enforcing the policies, procedures and protocols of Brethren Village from the time Geraldine E. Wiggins was admitted to Brethren Village on April 13, 2021, including the physicians, nurses, nurses’ aides, staff members and employees responsible for the care, supervision, treatment and safety of Geraldine E. Wiggins, starting on April 13, 2021, which includes those physicians, nurses, nurses’ aides, staff and employees identified in the records and charts of Brethren Village, whose names cannot be discerned from the records but whose identities are known to and within the exclusive control of Defendants, as well as those physicians, nurses, nurses’ aides, staff and employees whose names are not recorded in the records due to Defendants’ failure to implement and utilize proper record-keeping and documentation procedures but whose identities are known to and within the exclusive control of Defendants, all of whom were then and there acting within the scope of their authority and in the course of their employment with Defendant, Brethren Village, and in furtherance of Defendant, Brethren Village’s business and on behalf of Brethren Village.

9. Defendant, Brethren Village Realty, LLC, is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and was engaged in the business of owning, operating, managing and offering healthcare, medical services, rehabilitation and nursing care to the public at a rehabilitation and nursing home facility, Rehabilitation Center at Brethren Village, LLC, (“Brethren Village”) 3001 Lititz Pike, Lancaster, Pennsylvania. Plaintiff is asserting a professional liability claim against this Defendant.

10. At all times material hereto, Defendant, Brethren Village Realty, LLC, acted or failed to act by and through its agents, ostensible agents, servants, workmen, nurses, nurse’s aides, and/or employees, physicians, the nursing home administrators and/or administrators responsible for formulating, adopting,



monitoring and enforcing the policies, procedures and protocols of Brethren Village from the time Geraldine E. Wiggins was admitted to Brethren Village on April 13, 2021, including the physicians, nurses, nurses' aides, staff members and employees responsible for the care, supervision, treatment and safety of Geraldine E. Wiggins, starting on April 13, 2021, which includes those physicians, nurses, nurses' aides, staff and employees identified in the records and charts of Brethren Village, whose names cannot be discerned from the records but whose identities are known to and within the exclusive control of Defendants, as well as those physicians, nurses, nurses' aides, staff and employees whose names are not recorded in the records due to Defendants' failure to implement and utilize proper record-keeping and documentation procedures but whose identities are known to and within the exclusive control of Defendants, all of whom were then and there acting within the scope of their authority and in the course of their employment with Defendant, Brethren Village Realty, LLC, and in furtherance of Defendant, Brethren Village Realty, LLC's business and on behalf of Brethren Village Realty, LLC.

11. Defendant, Lori Schoener, is an individual residing herein at 123 Race Street, Richland, Pennsylvania 17087. Upon information and believe, at all relevant and material times herein, Lori Schoener was the licensed Nursing Home Administrator of Rehabilitation Center at Brethren Village, LLC during the residency of Geraldine E. Wiggins, and is therefore personally, jointly and vicariously liable, among other things, for the acts and omissions of herself and her agents, employees, servants, contractors, staff, and/or partners and all other Defendants, who played a role in the care provided to Geraldine E. Wiggins and in the operation of Brethren Village.

12. Defendants, Joe Does 1-4 (Fictitious Names) are individuals, corporations and/or other entities whose identities, after reasonable investigation, are currently unknown, but at all times relevant hereto owned, operated, controlled and/or managed Rehabilitation Center of Brethren Village, LLC and/or provided medical, nursing, rehabilitation and other health care services to Geraldine E. Wiggins during her admission to Rehabilitation Center of Brethren Village, LLC.

13. At all times material hereto, the Defendants individually and collectively owed duties to the residents of Brethren Village, including Geraldine E. Wiggins.

14. At all times relevant and material hereto the Defendants were aware of their obligations under the laws of the United States of America and of the Commonwealth of Pennsylvania with which Defendants were required to comply in providing care to Decedent including the United States Code, Pennsylvania Consolidated Statutes and the Pennsylvania Administrative Code.

15. The Defendants, directly and/or through their respective agents, servants and/or employees, accepted the responsibility for the care of Geraldine E. Wiggins, and in so doing, undertook and/or assumed a duty to Geraldine E. Wiggins to provide a safe nursing home facility necessary for the proper practice of medicine at said rehabilitation facility and to render reasonable, competent, proper, adequate and appropriate medical care, rehabilitation and nursing care, custodial care, rehabilitation services and treatment and, to take appropriate, preventative and curative measures as well as adequately supervise, monitor, and provide timely treatment and services to Geraldine E. Wiggins, and avoid and prevent harm to her.

16. The Defendants owed a duty to Geraldine E. Wiggins to exercise reasonable and ordinary care as a resident at Defendants' facility receiving medical, nursing, rehabilitation and other allied healthcare services. The Defendants' duties included, but were not limited to, establishing and enforcing their respective nursing home facility rules and regulations, medical staff practices, bylaws, policies, procedures, rules and regulations which mandate provision of proper medical, nursing and other healthcare provider services and/or care to the rehabilitation patients, including Geraldine E. Wiggins. The Defendants' duties also included hiring competent medical, nursing and other allied healthcare personnel, continuing and ongoing review of said competency, maintaining the facility such that it is free from ordinary hazards and defective equipment, maintaining sufficient staffing levels, insuring that all patients receive adequate, competent and timely medical, rehabilitation and other allied health care treatment and services while a patient at their rehabilitation facility, and, establishing and enforcing policies, procedures, protocols and systems to monitor their staff to ensure that all patients are receiving proper and timely care and treatment including, but not limited to, complete and accurate resident assessments, developing, enforcing and revising individualized, resident-centered care plans, adequate supervision/monitoring, proper use of



medication, proper use of physical and/or chemical restraints, proper establishment and enforcement of procedures for medical and nursing review and/or audit of the care given to patients, proper establishment of policies, procedures, protocols and guidelines to ensure that proper medical, rehabilitation, custodial and nursing care are performed on and for patients at their facility, including Geraldine E. Wiggins.

17. At all times relevant hereto, the Defendants, directly and/or through contractual agreement had a corporate responsibility through their respective bylaws, medical staff bylaws, rules, regulations and ongoing government functions to assure that only competent physicians, nurses and other health care providers engage in the medical, rehabilitation and nursing practice at this rehabilitation facility and other related fields of medicine on the Defendants' premises.

18. Defendants exercised complete and total control over the healthcare, skilled nursing and custodial care of all residents of their nursing facility, including Geraldine E. Wiggins.

19. At all times material hereto, Defendants were vertically integrated organizations / corporations that were controlled by their respective members, officers, managers, and/or board of directors who were responsible for the operation, planning, management and quality control of their Facility, Brethren Village.

20. At all times material hereto, the control exercised over the Facility by Defendants included, inter alia: budgeting, marketing, cash management, cost control, reimbursement, setting staffing levels, maintaining and increasing census, human resource management, training, supervision and oversight of their Facility's Administrator, supervision and oversight of their Facility's Director of Nursing, supervision of staff, obtaining licensure and certification, conducting mock surveys, conducting customer satisfaction surveys and monitoring customer satisfaction, corporate and regulatory compliance, quality of care assessment, and the creation and implementation of all policy and procedure manuals used by the Facility.

21. Defendants have failed to adequately train and/or supervise their physicians, nurses, nurses' aides and other healthcare providers which has resulted in personal harm and injury to Geraldine E. Wiggins.

22. The provisions of OBRA (Omnibus Budget Reconciliation Act of 1987) are applicable

with regard to Geraldine E. Wiggins' condition as it existed while in the Defendants' care and during her admission at the Defendants' facility beginning on April 13, 2021.

23. The Defendants held themselves out as a specialist in the field of rehabilitation care with the expertise necessary to maintain the health and safety of persons unable to care adequately for themselves.

24. At all times pertinent hereto, Geraldine E. Wiggins was a patient at Rehabilitation Center of Brethren Village, LLC and was under the exclusive care and control of the Defendants, their agents, officers, servants and/or employees.

25. The Defendants, their agents, officers, servants and/or employees failed, refused and/or neglected to perform the duties to provide reasonable and adequate health care to and for Geraldine E. Wiggins who was unable to attend to her own health, safety and well-being.

26. The Defendants, their agents, officers, servants and/or employees negligently, carelessly and recklessly provided care and treatment to Geraldine E. Wiggins, and all of the alleged acts, omissions and occurrences herein described or performed by the Defendants, their agents, officers, servants and/or employees fell within the course and scope of their agency and employment with the Defendants and in furtherance of the Defendants' business.

27. The Defendants provide twenty-four (24) hour a day, seven (7) day a week medical, nursing, custodial and rehabilitation care, services and assistance to its patients who have issues related to age, illness, disease, injury, convalescence and physical and mental infirmity.

28. The Defendants are responsible for nearly all the health care needs of their residents, including but not limited to, assistance with activities of daily living, bed mobility, transfer, ambulation, personal hygiene, nutrition, hydration, restorative care, incontinence care, turning and repositioning, supervision, monitoring, safety and rehabilitation.

29. The Defendants are responsible for ensuring that all doctor-ordered testing and medical services are performed.

30. The Defendants are required to conduct comprehensive and accurate assessment of their



patients' functional capacity, as well as their patients' needs and risk factors.

31. The Defendants are required to formulate and develop an individualized health "Care Plan" upon admission of each patient.

32. The Defendants are responsible for determining patients' risk level for injury including falls.

33. The Defendants are responsible for formulating, adopting, modifying and implementing injury prevention programs and care directives, including prevention programs for patients at risk for falls.

34. The Defendants are responsible for ensuring that injury prevention programs, procedures and protocols are implemented, executed and performed including prevention programs and procedures to prevent falls.

35. The Defendants are responsible for ensuring that a "Care Plan" is personalized for each patient and modified and/or revised as needs change.

36. The Defendants are responsible for ensuring that a "Care Plan" for patients includes safety measures and interventions to prevent falls.

37. The Defendants are responsible for ensuring that safety measures and interventions, including adequate pressure-relieving assistive devices, individualized turning and repositioning schedule, implementation of the appropriate infection control policies, procedures and techniques, hydration and nutrition protocols, adequate and timely incontinence care, hygiene services, adequate supervision and monitoring of patients with decreased mobility, safety awareness and cognition are implemented and executed.

38. Geraldine E. Wiggins, was admitted to Rehabilitation Center at Brethren Village, LLC on April 13, 2021 with diagnoses that included ambulatory dysfunction, generalized weakness and new onset A-Fib.

39. A "Fall Risk Assessment" was completed at time of admission and Geraldine E. Wiggins was considered at risk for falls related to a score of "26" (*a resident whose score is over 9 is at risk for falls*).

40. The "History of Present Illness" documented Geraldine E. Wiggins' reason for admission to Brethren Village as:

*Geraldine Wiggins is a 92 y.o. female admitted to nursing facility for ambulatory dysfunction having 2 falls at home prior to observation stay at LGH, for further PT/OT evaluation and treatment. Has had right knee pain since falls at home, XR in hospital negative for fracture. Today, states she feels a little hot and is tired, but otherwise she denies any pain, palpitation/flutter in chest, SOB, change in bowel or bladder.*

41. The staff at Brethren Village was aware of the patient's need for assistance with ambulation, activities of daily living and fall prevention as documented on the "Care Plan" for "Needs staff assistance for ADL's because of weakness" and "Has history of falls, potential for fall-related injury."

42. The following are some of the interventions the staff was to utilize to provide care and prevent falls for this patient:

*\* Be aware resident unable to independently bathe, dress, move self in bed, transfer, ambulate, toilet self, perform personal hygiene measures and feed self*

*Ambulate in hallway with rolling walker and one/two assist with gaitbelt*

*Encourage and assist resident as needed to bathroom upon rising, between meals and at bedtime*

*Observe for and report any decline in ADL performance; record appropriately in the EMR*

*One/Two assist for stand/pivot/weight bear between all support surfaces*

*Set up in bathroom at sink with supplies for grooming and bathing with assist as needed*

*My transfer status is stand and pivot Ax1 w/RW*

*Assist with ADL's, transfers and locomotion as needed, utilizing safety measures*

*Remind resident of the importance of asking for help before getting up or transferring, especially if he/she feels lightheaded or weak*

*When finding resident attempting to transfer independently, assess for basic needs, i.e., food, fluid, toileting, pain, boredom/anxiety*

43. Pursuant to medical records, Brethren Village increased their staff's workload related to Covid-19 precautions. But, despite the increase in staff workload, the staff of Brethren Village was well aware Geraldine E. Wiggins required one staff member and her assistive device to ambulate and transfer



safely.

44. The staff was also aware that the patient self-transferred but did not intervene or initiate additional interventions to prevent falls for this patient.

45. The April 24, 2021 "Statement Form" documented *"when I took care of Geraldine this morning caught her in the bathroom by herself she told me she took herself and at the time I didn't see a bruise."*

46. The patient's risk of falls was increased due to episodes of *"respiratory distress"* documented on the April 28, 2021 "MD Progress Notes" as *"Geraldine complained of shortness of breath this morning and was found to be hypoxic. Her SpO2 at the time was in the mid to high 80's and improved to the low 90s with supplemental oxygen."*

47. On May 3, 2021, "Physician's Orders" documented *"resident wheezing", "O2 sat 84%, lungs very diminished."*

48. A May 7, 2021 "MD Progress Note" revealed the patient's increased weakness during the morning hours as:

*Geraldine Wiggins is a 92 y.o. female seen and examined in her room on the rehabilitation unit, resting in her recliner chair. She reports she is feeling short of breath on exam. She admits to just waking up and ambulating which is when she often feels dyspnea.*

*She attests to being more tired in the mornings and feeling better as the day goes on.*

*Ambulatory Dysfunction: Geraldine reports therapy is going well, but that she does not feel ready to go home next week. PT reporting, she can ambulate up to 150 ft with four wheel walker and staff assistance, seems to have increased weakness and decreased functional status in the early morning. Will be discharged to personal care when appropriate, no discharge date set at this time. Continue PT/OT, continue to monitor.*

49. Geraldine E. Wiggins demonstrated a significant cognitive decline on May 9, 2021, documented in the "Progress Notes" as *"Res has been noted by staff to have been confused today. She had woken up several times unaware of where she was or what time of day it had been. Urine has fowl odor and is dark in color. Sip & Dip initiated."*

50. A May 10, 2021 "Progress Note" further documented *"Safety concerns: Yes. Safely*

*Concerns – note: Confusion and forgetfulness.”*

51. “Medication Administration Record” reveal a “Physician Order” dated May 10, 2021 for, “d/c functional abilities days 1-3 every day shift until 05/12/2021.” The MAR had the days of May 10, 11, and 12 highlighted to carry out the physician’s order.

52. Despite the fact the patient required staff assist for ambulation and activities of daily living, increased confusion, increased weakness and decreased functional ability in the morning hours and ordered to have her functional abilities discontinued on May 12, the staff of Brethren Village left Geraldine E. Wiggins alone at the bathroom sink on May 12, 2021 at 7:30AM.

53. The May 12, 2021 “Progress Note” documented the following:

*Patient on floor near at the foot of her recliner with walker in front of her and bed side table behind her. The back of her head was bleeding. We got her up off the floor and onto the chair. There was a quarter sized hematoma with small laceration to the base of the skull. Patient had been standing at the sink brushing her teeth when the CNA left her in the bathroom to take care of another patient who was having blood sugar issues. Patient then attempted to walk to the recliner to sit down and as she did she lost her balance falling backwards hitting her head on the base of the bedside table. First aid attempted with neuro and physical assessment. No other injuries noted. Pressure was applied to laceration for 15 minutes and continued to profusely bleed. MD called and order obtained to send to ER. Pressure applied for another 25 minutes until ambulance arrived to transport to LGH ER for evaluation at 0820 by MT ambulance. Denies pain. Neuro checks WNL. Daughter aware.*

54. Geraldine E. Wiggins was left alone despite the Plan of Care revealing the patient required staff assistance, despite the medical provider documenting “increased weakness and decreased functional status in the early morning,” despite her new onset of confusion, and the need for functional abilities to be temporarily discontinued.

55. The May 12, 2021 “Incident Report” documented Geraldine E. Wiggins’ “Predisposing Physiological Factors” as “Gait Imbalance, Impaired Memory” and her “Predisposing Situation Factor” as “Ambulating without assist”.

56. Geraldine E. Wiggins was transferred to Lancaster General Hospital on May 12, 2021. The Emergency Department Records reveals the following information:

*- Chief Complaint: Head Injury, Fall Evaluation*



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- Arrives via BLS amb from rehab center at Brethren Village after falling and striking head on corner of bedside nightstand.

With hematoma to posterior head.

ECF staff "couldn't get bleeding to stop" after holding pressure for 45 minutes.

EMS reports bleeding through ABD pad that was placed by them.

+ Plavix use.

Denies any abd, chest, back or neck pain.

HPI: patient is a 92-year-old female who presents after a fall. It was unwitnessed. She does have some mild confusion making history of present illness limited. The patient cannot tell me why she fell. She said, "I thought I can make it over to the chair."

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MDM: Patient presents with occipital hematoma with mild oozing. On my exam the patient was awake and alert but pleasantly confused. She did have an occipital hematoma with a small open wound. Figure-eight suture placed by physician's assistant. Bleeding subsided. Patient noted to have a C7 fracture. Cervical collar applied. She had no neck pain. Case discussed with the trauma service who recommended imaging of her chest abdomen pelvis. I also ordered basic bloodwork. Disposition is pending their evaluation. Patient remained comfortable in the ER.

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CT Angiogram Chest: Since the prior study, the patient has suffered mild superior endplate compression fractures at C7 and T1. A superior endplate compression fracture at T2 is stable. Multiple new compression fractures, most notable at the T7 level.

57. The May 12, 2021 "Neurosurgery Note" documented the "Impression/Plan" as "Acute fracture C7, T1 with no significant retropulsion", "Currently oriented to person only", "No surgical intervention needed" and "Aspen Cervical collar OK per Dr. Hernandez."

58. Geraldine E. Wiggins was readmitted to Brethren Village from Lancaster General Hospital.

59. On May 15, 201, Speech Therapy documented Geraldine E. Wiggins as "referred by physician for speech swallow evaluation. Patient exhibiting difficulty completing meals and rotary chew for regular diet intake. The functional deficits are caused by generalized weakness, decreased range of motion from C Collar placement."

60. The vertebral fracture and need for a cervical collar interfered with her meal consumption.

61. Geraldine E. Wiggins died on August 28, 2021 with failure to thrive listed at the cause of death.

62. Decedent suffered horrific injuries as a consequence of the negligence, neglect and abuse by Defendants, and/or Defendants' real and/or ostensible servants, agents and/or employees.

63. The negligence, neglect and abuse of Geraldine E. Wiggins by Defendants, and/or Defendants' agents and resulting injuries caused a significant decline in Decedent's clinical status and were significant contributing factors in causing Decedent's death.

64. The severity of the negligence, neglect and abuse inflicted upon Geraldine E. Wiggins by the Defendants' mismanagement, improper under-budgeting, understaffing of the facility and lack of training and/or supervision of the facility's employees, failure to provide adequate and appropriate health care, engaging in incomplete, inconsistent and fraudulent documentation, failure to develop and implement an appropriate care plan, failure to conduct accurate patient assessment, failure to ensure the highest level of physical, mental and psychosocial functioning was attained or maintained, failure to provide appropriate monitoring, supervision, care and services caused Decedent to experience, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scarring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

65. As a direct result of the Defendants' negligence, neglect, abuse, carelessness and recklessness herein described, Decedent was caused to suffer serious and permanent injuries as described herein, including a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scarring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.



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**CONDUCT OF THE DEFENDANTS**

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66. Plaintiff hereby incorporates by reference the prior paragraphs of this Fourth Amended Complaint, as if they have been more fully set forth herein.

67. During the course of her admission, Geraldine E. Wiggins was incapable of independently providing for all of her daily care and personal needs without reliable assistance.

68. At all relevant times, the Defendants, through their agents, servants, employees and/or representatives: (a) should have been and/or were aware of Geraldine E. Wiggins' needs and (b) represented that they could adequately care for her needs.

69. In exchange for money, Geraldine E. Wiggins was admitted to the Defendants' care at Brethren Village to obtain such care and protection.

70. The Defendants, upon information and belief, were controlled by a board of directors who were responsible for the operation, planning, management and quality control of Brethren Village.

71. At all relevant times, the Defendants, individually, and/or through their agents, servants and employees, assessed the needs of Geraldine E. Wiggins and promised that they would adequately care for her needs, akin to a hospital.

72. The Defendants were responsible for the operation, planning, management and quality control of their Facility.

73. The control exercised over the Defendants' Facility by the Defendants, included: budgeting, marketing, cash management, cost control, reimbursement, setting staffing levels, maintaining and increasing census, human resource management, training, supervision and oversight of their Facility's administrator, supervision and oversight of their Facility's director of nursing, supervision of staff, obtaining licensure and certification, conducting mock surveys, conducting customer satisfaction surveys and monitoring customer satisfaction, corporate and regulatory compliance, quality of care assessment, and the creation and implementation of all policy and procedure manuals used by their Facility.

74. The Defendants controlled reimbursement, quality care assessment and compliance, licensure, certification, and all financial, tax and accounting issues through control of the fiscal policies of

Brethren Village.

75. Upon information and belief, the corporate officers of Defendants utilized survey results and quality indicators to monitor the care being provided at their nursing homes, including Brethren Village.

76. Upon information and belief, the Defendants, including their owners, officers, directors, partners, members, managers and employees knew that Rehabilitation Center at Brethren Village, LLC has been cited by governmental units as follows:

1/23/2020: failed to assess a pressure ulcer for one of one resident's reviewed; and

8/12/2021: failed to comprehensively assess and administer medication to a wound; and timely administer wound treatment to a sacral wound for one of seven residents reviewed.

77. As a direct and proximate result of the Defendants' acts and omissions, and their breach of the duty of care, negligence, carelessness and recklessness, Decedent suffered: (a) severe permanent physical injuries resulting in pain, suffering, and disfigurement; (b) mental anguish, embarrassment, humiliation, degradation, emotional distress, and loss of personal dignity; (c) loss of capacity for enjoyment of life; (d) expense of otherwise unnecessary hospitalizations and medical care; and (e) death.

78. In causing the aforesaid injuries, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

79. The conduct of the Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

80. At all relevant times, the Defendants, individually, and/or through their agents, servants and employees, assessed the needs of Geraldine E. Wiggins, and promised that they would adequately care for her needs, akin to a hospital.

81. At all relevant times, the Defendants made a conscious decision to operate and/or manage their Facility so as to maximize profits at the expense of the care required to be provided to their residents, including Geraldine E. Wiggins.



82. In their efforts to maximize profits, the Defendants reduced staffing levels below the level necessary to provide adequate and timely care and services to their patients, including Geraldine E. Wiggins.

83. Upon information and belief, the Defendants caused staffing levels at their Facility to be set at a level such that the personnel on duty at any given time could not and did not reasonably and timely tend to the needs of their assigned patients, including Geraldine E. Wiggins.

84. Upon information and belief, the Defendants intentionally increased the number of sick and frail residents with greater health problems requiring more complex care.

85. The Defendants knew that the increase in the acuity care levels of the patient population would substantially increase the need for staff, services and supplies necessary for the patient population.

86. The Defendants failed to provide the resources necessary, including sufficient staff, services and supplies, to meet the needs of their patients, including Geraldine E. Wiggins.

87. The Defendants negligently, carelessly and recklessly caused the healthcare providers, nurses and nurses' aides who they placed and/or staffed at their Facility to be so unqualified and/or under-trained, that the personnel on duty at any given time could not and did not reasonably and timely tend to the needs of their assigned patients, including Geraldine E. Wiggins.

88. The aforementioned acts and omissions directly caused and/or increased the risk of the injuries and harm to Geraldine E. Wiggins and were known by the Defendants.

89. At all relevant times, the Facility was individually owned, and/or in concert owned, possessed, managed, controlled, operated and maintained under the exclusive control of the Defendants.

90. At all relevant times, the Defendants were operating individually or through their managers, members, partners, officers, agents, servants and employees who had actual, apparent and/or ostensible authority, and all of whom were acting within the course and scope of their employment and under the direct and exclusive control of the Defendants.

91. The aforementioned injuries, acts and omissions were caused solely and exclusively by reason of negligence, carelessness and recklessness of the Defendants, and their agents, servants and employees and were due in no part to any act or omission to act on the part of Geraldine E. Wiggins.

92. The Defendants exercised complete and total control over the total and complete healthcare of all the patients of their Facility, including Geraldine E. Wiggins, akin to a hospital.

**COUNT I – NEGLIGENCE**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**  
**v.**

**REHABILITATION CENTER AT BRETHREN VILLAGE, LLC, BRETHREN VILLAGE,  
BRETHREN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4**

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93. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint, as though same were fully set forth at length herein.

94. Upon accepting Geraldine E. Wiggins as a resident at their Facility, the Defendants, individually and jointly, assumed direct duties to provide her with adequate, timely and appropriate healthcare and other basic custodial services as set forth herein.

95. The Defendants had the ultimate responsibility to ensure that the rights, safety, welfare and well-being of their residents, including Geraldine E. Wiggins, were protected.

96. The Defendants owed a duty to provide adequate, timely and appropriate healthcare and related skilled nursing, custodial, restorative, therapy and rehabilitation care and services to their residents, including Geraldine E. Wiggins, such as reasonable caregivers would provide under similar circumstances.

97. The Defendants each owed duty to their patients, including Geraldine E. Wiggins, to hire, train, oversee and supervise their employees to ensure that their Facility was operated, and services were provided, to their residents in a safe and reasonable matter.

98. The Defendants each owed a duty and responsibility to furnish Geraldine E. Wiggins with appropriate, timely and competent medical, nursing and custodial care and services.

99. The Defendants each owed and failed to fulfill the following duties and responsibilities to Geraldine E. Wiggins:



- i) The duty to use reasonable care in the maintenance of safe and adequate facility;
- ii) The duty to select, hire, train and retain only competent staff;
- iii) The duty to oversee, monitor and supervise all persons who practice nursing and/or medical healthcare within their facility;
- iv) The duty to staff their facility with sufficient and adequately trained personnel to provide the care and services required by their facility's patients;
- v) The duty to maintain sufficient staffing, funding, supplies and resources for the facility to meet the needs of their facility's patients;
- vi) The duty to formulate, adopt, oversee, revise and enforce rules, policies, procedures and protocols to ensure quality of care for all their facility's patients;
- vii) The duty to take adequate, timely and appropriate measures to correct the known problems with quality of care, as well as the known problems with the delivery of medical, nursing and custodial care and services;
- viii) The duty to keep their facility's patients free and safe from abuse and neglect;
- ix) The duty to provide safe, decent and clean environment for their facility's patients; and
- x) The duty to warn their facility's patients, as well as their families and/or responsible parties, of the Defendants' inability to provide adequate, timely, appropriate and safe care and services when the Defendants were placed on notice, knew, or should have known, of the deficiencies in providing such care and services to and for their patients.

100. In addition to the direct acts and omissions of the Defendants, the Defendants also acted through their agents, servants, officers and employees, who were in turn acting within the course and scope of their employment, in furtherance of the Defendants' business and under the direct control and supervision of the Defendants.

101. All of the acts alleged to have been done or not to have been done by the Defendants were done or not done by said Defendants, their agents, ostensible agents, servants, workmen and/or employees, acting in the course and scope of their employment with and on behalf of said Defendants and failed or refused to act with reasonable care in the following manner:

- a. violating their duty to provide adequate resident care, including but not limited to diagnosis, evaluation, assessment, supervision, monitoring, medication and treatment monitoring, medication and treatment to and for Geraldine E. Wiggins;
- b. failure to provide adequate supervision and monitoring to Geraldine E. Wiggins to avoid accidents;

- c. failure to keep Geraldine E. Wiggins safe from falls;
- d. failure to identify and implement adequate interventions to keep Geraldine E. Wiggins safe;
- e. failure to develop a comprehensive care plan to address Geraldine E. Wiggins' fall risk;
- f. failure to monitor the effectiveness of interventions and modify Geraldine E. Wiggins' care plan when her condition required the same;
- g. violating their duty to develop and implement a comprehensive Care Plan to prevent a fall resulting in hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and death;
- h. violating their duty to develop and implement timely interventions to prevent a fall resulting in hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and death;
- i. failure to recognize that the Decedent was at risk for falls and provide appropriate and adequate supervision and monitoring to prevent a fall resulting in hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and death;
- j. failure to recognize the Decedent's fall-risk factors and prevent a fall resulting in hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and death;
- k. failure to properly assess and document the Decedent's change in condition;
- l. failure to provide for the Decedent's well-being and keep her safe from a fall resulting in hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and death;
- m. failure to provide for the Decedent's safety and well-being;
- n. failing to make the appropriate, thorough and timely assessment of Decedent's condition;
- o. failing to seek timely medical care when Decedent's condition required same;
- p. failing to properly train and supervise Defendants' actual or ostensible employees, servants, agents or other staff or healthcare providers to monitor Decedent and to provide for her safety, welfare and general well-being;
- q. failing to properly hire, train and supervise staff, employees and healthcare providers at Defendants' facility;
- r. failing to monitor the competency, adequacy and propriety of the treatment rendered by their agents, servants and employees who provided care and treatment to Decedent while a resident at Defendants' facility;



- s. failing to maintain Defendants' duty to formulate, adopt and enforce adequate policies, procedures and protocols to ensure that their facility's patients, including Decedent, are properly supervised, assessed, monitored and receive proper and timely medical, custodial and nursing care;
- t. failing to maintain Defendants' duty to formulate, adopt and enforce adequate policies, procedures and protocols to ensure that their facility's patients, including Decedent, are properly supervised, monitored and receive proper medical, custodial and nursing care to keep her free from pressure injuries;
- u. failing to maintain Defendants' duty to formulate, adopt and enforce adequate policies, procedures and protocols to ensure that their facility's patients, including Decedent, are properly supervised, monitored and receive proper medical, custodial and nursing care to keep her free from infections and sepsis;
- v. failing to maintain Defendants' duty to formulate, adopt and enforce adequate policies, procedures and protocols to ensure that their facility's residents, including Decedent, are properly supervised, monitored and receive proper medical, custodial and nursing care to keep him free from protein-calorie malnutrition;
- w. failing to administer the facility in a manner that enabled it to use its resource effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of the facility's residents, including Decedent;
- x. failing to ensure that the Defendants used the results of its assessments to develop, review and revise Decedent's "Care Plan";
- y. failing to ensure that Defendants' facility had sufficient nursing staff to provide nursing and custodial care and services to the residents in order to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident, including Decedent;
- z. failing to maintain compliance with the governmental rules and regulation to which Defendants' delivery of care is compared as part of the survey process conducted by the Pennsylvania Department of Health;
- aa. failing to provide adequate and sufficient staffing levels at Defendants' facility;
- bb. failing to properly select, retain and monitor the competency of the medical and nursing staff, their employees, agents, servants and other healthcare providers who treated Decedent and failing to ensure such persons provided care within the applicable standards of care;
- cc. failing to keep Decedent free from neglect and abuse;
- dd. failing to take appropriate steps to remedy continuing problems at the Defendants' facility that Defendants knew, or had reason to know, were occurring with Decedent's care, which included the need to increase the number of the facility's employees, hiring skilled and trained employees, adequately train and supervise the current employees, monitoring

conduct of the employees, and adopting new or changing the existing policies, procedures and protocols to ensure care provided was provided within the appropriate community standards;

- ee. making false, fraudulent, inadequate and inconsistent notes in Decedent's chart;
- ff. failing to obtain new or modified "Physicians' Orders" when changes in Decedent's condition were recognized by Defendants' agents;
- gg. failing to accurately, timely and consistently document Decedent's needs and the care and services provided to her in response to such needs;
- hh. violating Pennsylvania Statutes, Pennsylvania Administrative Regulations, as well as OBRA regulations;
- ii. grossly understaffing Defendants' facility;
- jj. failing to train the employees to recognize medical conditions/symptoms which required Decedent's transfer to the hospital;
- kk. failing to allocate adequate funds, resources and supplies and failure to implement a facility budget that provided for the necessary and sufficient funds, resources and staffing levels to enable and allow their facility to provide adequate, timely appropriate care and services to the facility's residents, including Decedent;
- ll. failure to recognize and investigate neglect and abuse occurring with the care and services provided and not provided to Decedent, and failure to report such neglect and abuse to the appropriate governmental agencies;
- m. All of the acts or failure to act constitute a deviation from the appropriate standards of care, negligence, carelessness and reckless indifference to the health, safety, welfare and well-being of Decedent;
- nn. Defendants' conduct caused harm to Decedent and increased the risk of harm to her; and
- oo. in committing the aforementioned acts and omissions, Defendants were acting negligently, carelessly and with reckless indifference to the safety, welfare and well-being of Decedent.

102. Upon information and belief, the Defendants, including their owners, members, managers, officers, directors and partners knew of and/or were made aware of the Pennsylvania Department of Health annual and complaint survey results and placed on notice of the status of Brethren Village.

103. At all times relevant to this lawsuit, the Defendants employed and directed physicians, nurses and other medical personnel who rendered care to Geraldine E. Wiggins.



104. At all times relevant to this lawsuit, the Defendants owed a duty to Geraldine E. Wiggins to provide competent and qualified physicians, surgeons, nurses, nurses' aides and other medical and quasi medical personnel to render proper care to her.

105. At all times relevant to this lawsuit, the Defendants owed Geraldine E. Wiggins a duty to operate their rehabilitation Facility in a careful and reasonable manner, under the circumstances, as would have been done by other rehabilitation facilities in and about the Pennsylvania area.

106. At all times relevant to this lawsuit, Defendants and their agents, staff and employees, owed Geraldine E. Wiggins the duty to possess and exercise that degree of skill and knowledge ordinarily possessed and exercised by similar rehabilitation, physicians and/or nurses in and about the Pennsylvania area.

107. At all times relevant hereto, Geraldine E. Wiggins' care was to be delivered and administered by medical staff, nursing staff and healthcare staff at the Defendants' rehabilitation Facility in a reasonably safe and prudent manner within the applicable standards of care for the community, as well as state and federal nursing home facility rules and regulations.

108. Geraldine E. Wiggins was a resident at Defendants' rehabilitation Facility and the Defendants negligently and carelessly and in wanton and willful disregard for her health, safety and general welfare, inflicted injury upon her in failing to timely provide appropriate and necessary medical, nursing, rehabilitation and custodial care, adequate monitoring and supervision.

109. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendants, as is more fully set forth herein, Geraldine E. Wiggins experienced, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

110. Geraldine E. Wiggins experienced severe and excruciating pain and suffering as the result of the aforesaid negligent, careless and reckless conduct of the Defendants, and Defendants' agents, and

their breach of the duty of care as set forth herein.

111. In causing the aforesaid injuries, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

112. Pennsylvania Code Chapter 28, Section 201 *et. seq.*, requires Defendants to comply with all federal, state and local regulations with regard to long-term care facilities.

113. The Defendants violated OBRA regulations, which establish the minimum standard of care to be followed by Defendants, including but not limited to the following:

- (a) 42 C.F.R. § 483.10 (a)(1) / § 483.10 the patient has a right to a dignified existence;
- (b) 42 C.F.R. § 483.12 / § 483.13 (b) & (c) the patient has the right to be free from abuse, neglect, misappropriation of patient property, and exploitation as defined in this subpart;
- (c) 42 C.F.R. § 483.12 (c)(1) / § 483.13(c)(2) the facility must ensure that all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of patient property, are reported immediately, but not later than 2 hours after the allegation is made, if the events that cause the allegation involve abuse or result in serious bodily injury, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury, to the Administratrices of the facility and other officials (including to the State Survey Agency and adult protective services where state law provides for jurisdiction in long-term care facilities) in accordance with State law through established procedures;
- (d) 42 C.F.R. § 483.20 (2)(ii) the facility must conduct an assessment after a significant change in patient's condition;
- (e) 42 C.F.R. § 483.21 (b)(b) / § 483.20(k) Comprehensive Care Plans, the facility must develop and implement a comprehensive person-centered care plan for each patient, consistent with the patient rights, that includes measurable objectives and timeframes to meet a patient's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment;
- (f) 42 C.F.R. § 483.24 / § 483.25 each patient must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, consistent with the patient's comprehensive assessment and plan of care;
- (g) 42 C.F.R. § 483.25 (b)(i) / (ii) / § 483.25 (c)(1)(2) Based on the comprehensive assessment of a resident, the facility must ensure that (i) A resident receives care, consistent with professional standards of practice, to prevent pressure ulcers and does not develop pressure ulcers unless the



individual's clinical condition demonstrates that they were unavoidable; and (ii) A resident with pressure ulcers receives necessary treatment and services, consistent with professional standards of practice, to promote healing, prevent infection and prevent new ulcers from developing.

- (h) 42 C.F.R. § 483.25 (d)(2) / § 483.25 (h)(2) each patient receives adequate supervision and assistance devices to prevent accidents;
- (i) 42 C.F.R. § 483.35 (a) / § 483.30(a)(1) the facility must provide services by sufficient number of each of the following types of personnel on a twenty-four (24) hour basis to provide nursing care to all patients in accordance with patient care plans; and
- (j) 42 C.F.R. § 483.70 (b) / § 483.75 (b) The facility must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.

114. Geraldine E. Wiggins fell within the class of persons the statutory rules, regulations and laws that were intended to protect by virtue of OBRA Regulations and the Pennsylvania Code 28 §§ 201, *et. seq.*, thus entitling Plaintiff to adopt such laws as the standard of care for measuring Defendants' conduct. Thus, Plaintiff asserts a claim for negligence *per se*, asserting that, as a matter of law, the conduct of the Defendants amounted to negligence and negligence *per se*.

115. At all relevant times pertinent hereto, there was in full force and effect 18 Pa.C.S.A. § 2713 "Neglect of Care Dependent Person", providing penal consequences for neglect of a care-dependent person for:

*Intentionally, knowingly or recklessly causes bodily injury or serious bodily injury by failing to provide treatment, care, goods or services necessary to preserve the health, safety or welfare of a care-dependent person for whom he is responsible to provide care.*

116. 18 Pa.C.S.A. § 2713 "Neglect of Care Dependent Person" expresses the fundamental public policy of the Commonwealth of Pennsylvania that older adults, like children, are not to be abused or neglected, particularly in health care facilities or by persons holding themselves out as trained professionals, and that if such neglect or abuse causes injury, either physical or mental, then such conduct is actionable.

117. At all relevant times pertinent thereto, Geraldine E. Wiggins was a care-dependent resident at Defendants' facility and as such, fell within the class of persons 18 Pa.C.S.A. §2713 "Neglect of Care

Dependent Person” was intended to protect, and as such, entitling Plaintiff to adopt 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” as the standard of care for measuring the conduct of the Defendants.

118. Furthermore, 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” is directed to obviate the specific kind of harm which Geraldine E. Wiggins sustained, with its purpose, at least in part, to protect the interest of a group of individuals, i.e., *care-dependent persons*, including Geraldine E. Wiggins.

119. Defendants, in accepting the responsibility for providing for Geraldine E. Wiggins’ care, welfare and well-being, as mentioned herein, and were negligent *per se* as they violated 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” in that they failed to provide treatment, care, goods and services necessary to preserve the health, safety or welfare of Geraldine E. Wiggins, for whom they were responsible to provide care as specifically set forth in this Fourth Amended Complaint.

120. As a direct result of the Defendants’ aforementioned negligence *per se*, Geraldine E. Wiggins was caused to suffer serious injuries as aforesaid.

121. The conduct of the Defendants was intentional, outrageous and willful and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

122. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demands judgment in her favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT II – VICARIOUS LIABILITY**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

v.

**REHABILITATION CENTER AT BRETHREN VILLAGE, LLC, BRETHREN VILLAGE,**  
**BRETHREN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4**

123. Plaintiff incorporates by reference herein the allegations contained in the receding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

124. At all times relevant hereto, Defendants’ agents, servants, employees and others were acting in the scope of their employment as agents, servants or employees of Defendants’ Facility.



125. Defendants are vicariously liable for the acts, commissions or omissions, of their physicians, nurses, nurses' aides and other medical personnel and healthcare providers fully as though the aforementioned physicians, nurses, nurses' aides and other medical personnel and healthcare providers performed the acts or omissions themselves. In the alternative, the Defendants are responsible for the negligent acts or omissions of other physicians, nurses, nurses' aides and other healthcare providers who are agents, employees and/or servants of the Defendants.

126. At all times relevant to this lawsuit, the Defendants, employed and directed physicians, nurses, nurses' aides and other medical personnel who rendered care to Geraldine E. Wiggins.

127. At all times relevant to this lawsuit, Defendants owed a duty to Geraldine E. Wiggins to provide competent and qualified physicians, surgeons, nurses and other quasi-medical personnel to render care to her.

128. At all times relevant to this lawsuit, the Defendants owed to Geraldine E. Wiggins the duty to operate their Facility in a careful and reasonable manner, under the circumstances, as would have been done by other similar facilities in and about the Pennsylvania area.

129. At all times relevant to this lawsuit, the Defendants and their agents, owed Geraldine E. Wiggins the duty to possess and exercise that degree of skill and knowledge ordinarily possessed and exercised by similar facilities, physicians and/or nurses in and about the Pennsylvania area.

130. At all times relevant to this lawsuit, Geraldine E. Wiggins' care was to be delivered and administered by the agents, servants and/or employees of the Defendants at the Defendants' Facility in a reasonably safe and prudent manner within the applicable standards of care for the community Commonwealth of Pennsylvania and federal nursing home facility rules and regulations.

131. The Defendants breached their duties and were, therefore, negligent, careless and exhibited a reckless disregard to the health, safety, welfare and well-being of Geraldine E. Wiggins.

132. The aforesaid breaches of duties, negligence, carelessness and recklessness of the Defendants directly and proximately caused the aforesaid injuries to Geraldine E. Wiggins, including, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion

from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

133. In causing the aforesaid injuries, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

134. The conduct of the Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

135. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demands judgment in her favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT III - CORPORATE LIABILITY**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**  
**v.**  
**REHABILITATION CENTER AT BRETHERN VILLAGE, LLC, BRETHERN VILLAGE**  
**REALTY, LLC and JOHN DOES 1-4**

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136. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

137. Defendants' agents, employees, and servants and others provided care and treatment to Geraldine E. Wiggins as agents, employees, servants, officers or directors of Defendants or apparent agents held out as such.

138. At all times relevant hereto, Defendants' agents, servants, employees and others were acting in the scope of their employment as agents, servants, or employees of said Defendants.

139. At all relevant times pertinent hereto, the corporate conduct of the Defendants was independent of the negligent conduct of the employees, and was outrageous, willful, and wanton, and exhibited a reckless indifference to the health, welfare and well-being of Decedent.

140. Defendants, as corporate entities, are liable based on the following duties of care owed to Geraldine E. Wiggins:



- a) a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment;
- b) a duty to select and retain only competent physicians;
- c) a duty to oversee all persons who practice medicine within its walls as to patient care; and,
- d) a duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients.

141. Defendants owed Geraldine E. Wiggins a duty concerning the care and treatment under a corporate negligence standard with regard to the policies, actions and inactions of the institution itself and are directly liable for their own negligence.

142. Defendants and their corporate members, managers, partners, owners, and directors breached their duties and were, therefore, negligent, careless and reckless in their duties and obligations to Geraldine E. Wiggins.

143. The aforesaid breaches of duties, corporate negligence, carelessness and recklessness of Defendants directly and proximately caused the aforesaid injuries to Decedent, including but not limited to, experience, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scarring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

144. In causing the aforesaid injuries, Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

145. The conduct of the Defendants was intentional, outrageous, willful and wanton and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

146. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demands judgment in her favor and against all Corporate Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT IV -SURVIVAL CLAIM**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

v.

**REHABILITATION CENTER AT BRETHERN VILLAGE, LLC, BRETHERN VILLAGE,**  
**BRETHERN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4**

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147. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

148. Plaintiff, Brenda L. Kling, Administratrix of the Estate of Geraldine E. Wiggins, deceased, also brings this action on behalf of the Estate of Geraldine E. Wiggins, deceased, under and by virtue of the Act of 1972, June 30, P.L. 508, No. 164, Section 2, eff. July 1972, as amended, 20 Pa.C.S.A. 3371, et seq., (known as the Pennsylvania Survival Act”).

149. Plaintiff, Brenda L. Kling, as daughter and Administratrix of the Estate of Geraldine E. Wiggins, deceased, is a survival claim beneficiary.

150. Plaintiff, Brenda L. Kling, as Administratrix of the Estate of Geraldine E. Wiggins, deceased, also claims on behalf of the Estate of Geraldine E. Wiggins, deceased, all damages recoverable under the Pennsylvania Survival Act, including, but not limited to damages for the conscious pain and suffering undergone by Decedent, up to and including the time of her death, which was caused by the Defendants’ breach of duties, negligence, carelessness, and recklessness.

151. Plaintiff claim damages for the fright and mental suffering attributable to the peril leading to the physical manifestation of mental and physical injuries experience, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life’s pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

152. In causing the aforesaid injuries, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.



153. As a result of the death of Geraldine E. Wiggins, her Estate has been deprived of the economic value of the Decedent's life during the period of her life expectancy and Plaintiff, as Administratrix of the Estate of Geraldine E. Wiggins, deceased, claim damages for pecuniary loss sustained by the Estate as a result of her death, as well as for the conscious pain and suffering undergone by Decedent, up to and including the time of her death.

154. The conduct of the Defendants was intentional, outrageous, willful, wanton and exhibited a reckless indifference to the safety, health, welfare, and well-being of Geraldine E. Wiggins.

155. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demands judgment in her favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT V - WRONGFUL DEATH CLAIM**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

v.

**REHABILITATION CENTER AT BRETHREN VILLAGE, LLC, BRETHREN VILLAGE,  
BRETHREN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4**

156. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

157. Plaintiff also brings this action on behalf of Decedent's estate under and by virtue of the Act of 1855 P.L. 30, as amended, Pa.R.C.P. 2202, as further amended, July 1976, 42Pa.C.S.A. 8301 (known as the "Pennsylvania Wrongful Death Act").

158. Plaintiff, Brenda L. Kling, as daughter and Administratrix of the Estate of Geraldine E. Wiggins, deceased, is a wrongful death beneficiary.

159. Plaintiff claims all damages recoverable under the Pennsylvania Wrongful Death Act, including, but not limited to damages for pecuniary loss suffered by Decedent's survivors by reason of the death of Geraldine E. Wiggins, as well as for the reimbursement for medical expenses, nursing expenses, funeral expenses, expenses of administration and other expenses incurred in connection therewith.

160. As a result of the death of Geraldine E. Wiggins, the aforesaid survivors have been deprived of the comfort, aid, assistance, tutelage, maintenance, and companionship that they would have received from Decedent for the remainder of her natural life.

WHEREFORE, Plaintiff demands judgment in her favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT VI- BREACH OF FIDUCIARY DUTY**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

v.

**REHABILITATION CENTER OF BRETHREN VILLAGE, LLC**

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161. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

162. At all times material and relevant hereto, Geraldine E. Wiggins was incapable of dealing with the facility, Brethren Village, on equal terms, and was incapable of engaging in any arm's length relationship with them.

163. Additionally, at all times material and relevant hereto, Geraldine E. Wiggins was incapable of independently providing for her own safety, health, welfare and well-being and justifiably relied on the Facility to provide necessary care and services to attain and/or maintain her highest practicable physical, mental and psychosocial well-being.

164. At all times material and relevant hereto, the Facility individually and/or collectively fostered and forged a relationship of special confidence and trust with Geraldine E. Wiggins by admitting her into their care on April 13, 2021, and by reserving the right to specifically determine the level of care, safety, protection, services and supplies that would be provided to Geraldine E. Wiggins.

165. At all times material and relevant hereto, the Facility individually and/or collectively controlled and oversaw every single aspect of Geraldine E. Wiggins's existence, including her activities of daily living (ADL), custodial care, as well as skilled nursing and healthcare.

166. At all times material and relevant hereto, the facility individually and/or collectively determined and orchestrated the most trivial as well as the most vital aspects of Geraldine E. Wiggins's



existence, from the type of clothing she wore, to when and how she received healthcare, as well as quality and quantity of food and water she could consume.

167. As a result, Geraldine E. Wiggins was solely and entirely dependent upon the Facility's staff, employees, agents, officers and directors, to provide for her basic daily care, skilled nursing and healthcare, services, safety, protection, well-being and personal and intimate needs.

168. Geraldine E. Wiggins reposed a special confidence into the Facility's staff, employees, agents, officers and directors to provide her with necessary care and services to attain and/or maintain her highest practicable physical, mental, and psychosocial well-being.

169. At all times material hereto, the Facility developed a special relationship with Geraldine E. Wiggins by virtue of the type of the care and services she required, their supposedly superior knowledge, skill and expertise, and their overmastering dominance over Geraldine E. Wiggins and by virtue of Geraldine E. Wiggins's weakness, dependence and inability to independently provide for her own safety, health, welfare and well-being and her justifiable reliance on the Facility to provide for her safety, health, welfare and well-being.

170. In their special relationship with one another, Geraldine E. Wiggins, a vulnerable and dependent individual, did not and could not deal with the Facility on equal terms due to the Facility's overmastering dominance on one side, and due to Geraldine E. Wiggins's weakness and justifiable trust on another side.

171. At all times material hereto, Geraldine E. Wiggins entrusted her care, treatment, as well as every single aspect of her very existence into the exclusive care, custody and control of the Facility and its staff, employees, agents, officers and directors.

172. At all times material hereto, the aforementioned special relationship enabled the facility to occupy a position of confidence regarding Geraldine E. Wiggins requiring fidelity, loyalty and scrupulous fairness and good faith on the part of the Facility.

173. The aforementioned special relationship further required the Facility to refrain from using its position to Geraldine E. Wiggins's detriment and the facility's own advantage.

174. As such, and at all times material hereto, the facility, Rehabilitation Center at Brethren Village, LLC, was a fiduciary of Geraldine E. Wiggins.

175. At all times material hereto, the Facility owed a fiduciary duty to Geraldine E. Wiggins.

176. The Facility breached its fiduciary duty and its fiduciary obligations, as well as violated its relationship of trust and special confidence owed to Geraldine E. Wiggins by: a) engaging in the conduct set forth in detail in the within Fourth Amended Complaint; and b) allowing revenues, profits and assets obtained from the Facility's patients as well as their payor sources for inflated, improper and unreasonable inter-company fees and transfers designed and created for the benefit of the facility's owners, parent companies, affiliates and the Defendants herein, instead of utilizing said resources effectively and efficiently in order to maintain and/or attain the highest practicable physical, mental and psychosocial well-being of the Facility's residents, including Geraldine E. Wiggins.

177. In their dealings with Geraldine E. Wiggins, as described herein, the Facility acted in bad faith, and used its position of trust and special confidence to their own advantage and to Geraldine E. Wiggins's detriment.

178. In violating its fiduciary duties and obligations to Geraldine E. Wiggins, the Facility knew or should have known, that Geraldine E. Wiggins would suffer harm.

179. The conduct of the Facility was intentional, outrageous, willful, wanton and exhibited a reckless indifference to the safety, health, welfare and well-being of Geraldine E. Wiggins.

180. The conduct of the Facility was such, that an award of punitive damages is justified.

*WHEREFORE*, Plaintiff demands judgment in her favor and against Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT VII – CORPORATE DEFENDANTS AIDING AND ABETTING BREACH OF  
FIDUCIARY DUTY**

**BRENDA L. KLING, ADMINISTRATRIX OF  
THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

**v.**

**BRETHREN VILLAGE, BRETHREN VILLAGE REALTY, LLC, JOHN DOES 1-4**

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181. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

182. Corporate Defendants knew, or should have known, of Geraldine E. Wiggins's fiduciary relationship with the Facility, Rehabilitation Center at Brethren Village, LLC, by virtue of the type of the care and services she required, the supposedly superior knowledge, skill and expertise, and their overmastering dominance over Geraldine E. Wiggins, and by virtue of Geraldine E. Wiggins' weakness, dependence and inability to independently providing for her own safety, health, welfare and well-being and is justifiable reliance on the Facility to provide for her safety, health, welfare and well-being.

183. Corporate Defendants knowingly participated in and provided substantial assistance and encouragement to the Facility in connection with the facility's breach of their fiduciary duties and obligations to Geraldine E. Wiggins, as set forth in detail in Count VI of this Fourth Amended Complaint.

184. Corporate Defendants knew, or should have known, that the facility's residents, including Geraldine E. Wiggins, were incapable of independently providing for their own care, safety and well-being, and were justifiably relying on, and solely depending upon the Facility's staff, employees, agents, officers and directors to provide for the basic daily and custodial care, skilled nursing and healthcare services, safety, welfare and well-being.

185. Additionally, Corporate Defendants knowingly assisted, encouraged, aided and abetted the Facility in its breach of fiduciary duties and obligations to the Facility's residents, including Geraldine E. Wiggins, by: a) engaging in the conduct set forth in detail in this Fourth Amended Complaint; b) exercising complete and total control over the Facility's revenues by regularly and repeatedly sweeping nearly all of the Facility's revenues into corporate account under exclusive control of the Corporate Defendants and/or their designee; c) knowingly and intentionally creating and accepting inter-company fees and transfers consisted of revenues derived from the Facility's patients and their payor sources, and designed to improperly and unjustly enrich the Corporate Defendants, instead of allowing the Facility to utilize its resources effectively and efficiently to allow the Facility's patients, including Geraldine E. Wiggins, to attain and/or maintain their highest practicable physical, mental and psychosocial well-being; d) structuring

181. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

182. Corporate Defendants knew, or should have known, of Geraldine E. Wiggins's fiduciary relationship with the Facility, Rehabilitation Center at Brethren Village, LLC, by virtue of the type of the care and services she required, the supposedly superior knowledge, skill and expertise, and their overmastering dominance over Geraldine E. Wiggins, and by virtue of Geraldine E. Wiggins' weakness, dependence and inability to independently providing for her own safety, health, welfare and well-being and is justifiable reliance on the Facility to provide for her safety, health, welfare and well-being.

183. Corporate Defendants knowingly participated in and provided substantial assistance and encouragement to the Facility in connection with the facility's breach of their fiduciary duties and obligations to Geraldine E. Wiggins, as set forth in detail in Count VI of this Fourth Amended Complaint.

184. Corporate Defendants knew, or should have known, that the facility's residents, including Geraldine E. Wiggins, were incapable of independently providing for their own care, safety and well-being, and were justifiably relying on, and solely depending upon the Facility's staff, employees, agents, officers and directors to provide for the basic daily and custodial care, skilled nursing and healthcare services, safety, welfare and well-being.

185. Additionally, Corporate Defendants knowingly assisted, encouraged, aided and abetted the Facility in its breach of fiduciary duties and obligations to the Facility's residents, including Geraldine E. Wiggins, by: a) engaging in the conduct set forth in detail in this Fourth Amended Complaint; b) exercising complete and total control over the Facility's revenues by regularly and repeatedly sweeping nearly all of the Facility's revenues into corporate account under exclusive control of the Corporate Defendants and/or their designee; c) knowingly and intentionally creating and accepting inter-company fees and transfers consisted of revenues derived from the Facility's patients and their payor sources, and designed to improperly and unjustly enrich the Corporate Defendants, instead of allowing the Facility to utilize its resources effectively and efficiently to allow the Facility's patients, including Geraldine E. Wiggins, to attain and/or maintain their highest practicable physical, mental and psychosocial well-being; d) structuring



the managing and operating business model for the Facility in such a way that constrained the Facility's ability to provide the adequate and necessary care and services to their residents, including Geraldine E. Wiggins, while simultaneously benefiting and enriching the pyramid structure corporate entities; e) overseeing, managing, and controlling the Facility's acceptance of reimbursement from residents, including Geraldine E. Wiggins, knowing that the Facility could not provide full value of the care and services to meet the care and safety needs of their residents, including Geraldine E. Wiggins; f) drafting, structuring and approving contracts between the Facility and Defendants, which the Defendants knew, or should have known, would result in diversion and depleting of the facility revenues, necessary to provide the care and services to and meet the needs of their residents, including Geraldine E. Wiggins.

186. The aforementioned conduct of the Defendants constitutes knowing and intentional aiding and abetting the Facility's breach of their fiduciary duties and obligations to the Facility's residents, including Geraldine E. Wiggins, and subjects Corporate Defendants to liability for the injuries and harm suffered by Geraldine E. Wiggins, as aforesaid.

187. In adding and abetting the Facility in their breach of fiduciary duties and obligations to Geraldine E. Wiggins, as aforesaid, Corporate Defendants knew, or should have known, that Geraldine E. Wiggins would suffer harm.

188. As a result of Corporate Defendants' aiding and abetting the Facility's breach of their fiduciary duties and obligations to the Facility's residents, including Geraldine E. Wiggins, Corporate Defendants were improperly and unjustly enriched, their Facility, Rehabilitation Center at Brethren Village, LLC, was left with inadequate staff and resources to provide for the care and meet the needs of the Facility's residents, including Geraldine E. Wiggins, and Geraldine E. Wiggins suffered foreseeable and avoidable injuries set forth herein, and more specifically, experience, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scarring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

189. The conduct of Corporate Defendants was intentional, outrageous, willful, wanton and exhibited a reckless indifference to the safety, health, welfare and well-being of Geraldine E. Wiggins.

190. The conduct of Corporate Defendants was such, that an award of punitive damages is justified.

*WHEREFORE*, Plaintiff demands judgment in her favor and against Corporate Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**ROSENBAUM & ASSOCIATES, P.C.**

Dated: December 22, 2022

BY: /s/ Andrei Govorov  
Andrei Govorov, Esquire  
Counsel for Plaintiff



**VERIFICATION**

I verify that the statements made in the foregoing Fourth Amended Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

**ROSENBAUM & ASSOCIATES, P.C.**

Dated: December 22, 2022

**BY:** /s/ Andrei Govorov  
Andrei Govorov, Esquire  
Counsel for Plaintiff

## EXHIBIT B





## SUPPLEMENTAL STAFFING AGREEMENT

This Supplemental Staffing Agreement ("Agreement") is entered into the 22nd day of September, 2020 by and between Brethren Village Retirement Community, with its physical address at 3001 Lititz Pike in Lititz, PA 17543 ("Client"); and NurSelect, LLC, a Pennsylvania business with its administrative offices located at 630 Freedom Business Center Drive, Third Floor, King of Prussia, PA 19406 ("NurSelect").

### RECITALS

A. NurSelect is a health care employment service engaged in the business of recruiting and placing qualified nursing personnel, such as, certified nursing assistants, licensed practical nurses, and registered nurses (collectively, "NurSelect Personnel") on contractual assignments on a per-diem or temporary basis (the "Services").

B. The Client desires NurSelect, and NurSelect agrees, upon the terms and conditions more fully set forth herein, to provide NurSelect Personnel to the Client to perform the Services.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

### ARTICLE I – THE SERVICES; NURSELECT PERSONNEL

1.1 Staffing; Services. Upon receipt of a request by the Client for NurSelect Personnel, and according to the availability of the requested NurSelect Personnel, NurSelect will provide the NurSelect Personnel to the Client, from time to time, at the locations requested, to provide the Services in a quantity and with the qualifications specified by the Client in said request. Services will be provided by NurSelect Personnel that (a) meet the highest professional standards and principles applicable to Services; and (b) shall be provided timely in accordance with the needs of the patient receiving the Services. Services shall be provided: (x) in accordance with federal, state and local laws, rules, ordinances and regulations; and (y) consistent with the policies and procedures of Client. Neither NurSelect, nor NurSelect Personnel shall do or omit to do anything that would jeopardize the licensure of the Client or its participation in governmental health programs, including Medicare and Medicaid.

1.2 Licensure and Certification of NurSelect Personnel. All NurSelect Personnel shall, at all times while performing the Services, have the appropriate nursing licenses, certifications and/or clinical experience, background checks, reference checks and any other certification or document required by law to provide the Services. From time to time, the Client may notify NurSelect of its need for NurSelect Personnel who possess a specialized certification and/or who have particular clinical experience to provide specialized services. Subject to the terms and conditions of this Agreement, NurSelect will provide NurSelect Personnel having the appropriate licenses, certification, and/or clinical experience required by applicable law to perform such specialized services. NurSelect shall keep and make available to the Client, upon written request by the Client, all licenses, certifications and other documentation verifying clinical experience and/or such other specification needed to furnish any of the Services. NurSelect shall comply with 28 Pa. Code Section 201.21.













ARTICLE II – PAYMENT FOR SERVICES







#### ARTICLE III - STATUS OF THE PARTIES

3.1 NurSelect Employees. It is expressly understood and agreed that all NurSelect Personnel shall not be considered employees or agents of the Client but instead shall be considered leased employees of NurSelect. Further, it is expressly understood and agreed by the parties that nothing contained in this Agreement shall be construed to create a joint venture, partnership, association or other affiliation or like relationship between the parties hereto, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. NurSelect shall be solely responsible for paying NurSelect Personnel and providing NurSelect Personnel with employment benefits, if any, offered by NurSelect. NurSelect shall be solely responsible for providing unemployment insurance and workers compensation benefits to NurSelect Personnel. NurSelect shall be solely responsible to handle all unemployment and workers compensation claims involving NurSelect Personnel.

3.2 No Claims for Certain Benefits. NurSelect and its NurSelect Personnel shall not have any claim under this Agreement or otherwise against the Client for employee benefits offered by the Client to its employees, including, without limitation, vacation pay, paid sick leave, retirement benefits, social security, workers compensation, health, disability, or professional malpractice benefits of any kind. NurSelect will indemnify and hold the Client harmless from any and all claims and liability arising from claims relating to the failure of the Client to provide any such benefits to any NurSelect Personnel.

3.3 No Claims for Withholding. The Client shall not withhold, on behalf of NurSelect or any NurSelect Personnel, any sums for income tax, unemployment insurance, social security or other withholding pursuant to any applicable law or requirement of any governmental body. NurSelect shall solely be responsible for all required withholdings from NurSelect Personnel wages and for remitting the same to the applicable governmental and other parties. NurSelect shall indemnify and hold the Client harmless from any and all claims and/or liability arising from claims relating to the Client's failure to make any such withholdings on behalf of NurSelect or any NurSelect Personnel.



ARTICLE IV - INSURANCE



4.2 Proof of Insurance. NurSelect shall, upon written request from the Client, provide to the Client certificates of insurance or other appropriate evidence of satisfaction of its obligations to maintain insurance as described in this Article. NurSelect agrees that it will notify the Client at least thirty (30) days in advance of cancellation, non-renewal, or adverse change in its insurance.

ARTICLE V - APPORTIONMENT OF LIABILITY AND DAMAGES INDEMNIFICATION

5.1 Apportionment of Liability. It is hereby stipulated and agreed between the Client and NurSelect that with respect to any claim or action arising out of the Services, each entity shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements or judgments resulting from negligence, actions or omissions of its own agents, officers, and employees.



ARTICLE VI - TERM AND TERMINATION

6.1 Term. The initial term of this Agreement shall commence on the date above first written ("Commencement Date") and shall continue for one (1) year from the Commencement Date ("Term"). Except as otherwise stated herein, the Term shall be automatically extended for one (1) additional year and so on from year to year until either NurSelect or the Client give to the other no less than thirty (30) days' written notice of termination prior to the end of the then-current Term.







ARTICLE VII - CONFIDENTIAL INFORMATION



ARTICLE VIII - NON-ENGAGEMENT COVENANT





ARTICLE IX - HEALTH INSURANCE PORTABILITY AND  
ACCOUNTABILITY ACT OF 1996 PROVISIONS











ARTICLE X - OTHER TERMS AND CONDITIONS







IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and date first written above.

CLIENT:

By: David Rayha  
Name: DAVID A. RAYHA NHA  
Title: VP OPERATION/COD

NURSELECT:

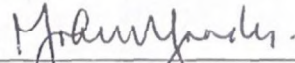
By: David E. Sherry  
Name: DAVID E. SHERRY  
Title: PRESIDENT

BRENDA L. KLING, individually and as	:	IN THE COURT OF COMMON PLEAS
Administratrix of the Estate of	:	OF LANCASTER COUNTY,
GERALDINE E. WIGGINS,	:	PENNSYLVANIA
	:	
Plaintiff	:	
	:	NO: CI-22-04128
v.	:	
	:	MedMal
REHABILITATION CENTER AT	:	
BRETHREN VILLAGE, LLC,	:	
BRETHREN VILLAGE, BRETHREN	:	
VILLAGE REALTY, LLC, LORI	:	
SCHOENER, NHA, and JOHN DOES1-	:	
4	:	
Defendants,	:	
	:	
v.	:	
	:	
NURSELECT, LLC,	:	
	:	
Additional	:	
Defendant.	:	

**VERIFICATION**

I verify that the statements made in the attached Third-Party Joinder Complaint are true and correct to the best of my knowledge, information, and belief. I understand that the statements therein are subject to the penalties of 18 Pa.C.S. § 4904.

Date: June 13, 2023

By:   
 John Snader, FACHE  
 President/CEO Brethren Village



DATE: 8/25/23  
WRIT RE-ISSUED  
ANDREW E. SPADE  
PROTHONOTARY

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CLERK OF COURT  
LANC. CO. PA

# EXHIBIT 5



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PROTHONOTARY'S OFFICE  
LANCASTER, PA  
\*\*\*Electronically Filed\*\*\*  
Jul 11 2022 12:21PM  
Ricci M. Dehl

ROSENBAUM & ASSOCIATES, P.C.  
BY: ANDREI GOVOROV, ESQUIRE  
Attorney ID No.: 209365  
1818 Market Street - Suite 3200  
Philadelphia, PA 19103  
(215) 569-0200  
[agovorov@rosenbaumfirm.com](mailto:agovorov@rosenbaumfirm.com)

MAJOR-JURY  
ASSESSMENT OF DAMAGES  
HEARING IS REQUIRED.

Attorney for Plaintiff

BRENDA L. KLING, ADMINISTRATRIX :  
of the ESTATE OF GERALDINE E. WIGGINS :  
deceased :  
19 Verbena Drive :  
Lancaster, Pennsylvania 17062 :

LANCASTER COUNTY  
COURT OF COMMON PLEAS

No.: \_\_\_\_\_

**CI-22-04128**

vs.

REHABILITATION CENTER at BRETHREN :  
VILLAGE, LLC :  
3001 Lititz Pike :  
Lititz, Pennsylvania 17543 :

And

BRETHREN VILLAGE :  
3001 Lititz Pike :  
Lititz, Pennsylvania 17543 :

And

BRETHREN VILLAGE REALTY, LLC :  
3001 Lititz Pike :  
Lititz, Pennsylvania 17543 :

And

LORI SCHOENER, NHA :  
123 Race Street :  
Richland, Pennsylvania 17087 :

And

JOHN DOES 1-4 (Fictitious Names)

**CIVIL ACTION**  
**NOTICE**

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU

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LANCASTER, PA

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Jul 11 2022 12:21PM

Ricci M. Dehl

FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral & Information Service  
Lancaster County Bar Association  
28 E Orange Street  
Lancaster, PA 17602

**CI-22-04128**

**AVISO**

LE HAN DEMANDADO A USTED EN LA CORTE. SI USTED QUIERE DEFENDERSE DE ESTAS DEMANDAS EXPUESTAS EN LAS PAGINAS SIGUIENTES, USTED TIENE VIENTE (20) DIAS DE PLAZO AL PARTIR DE LA FECHA DE LA DEMANDA Y LA NOTIFICACION. HACE FALTA ASENTAR UNA COMPARENCIA ESCRITA O EN PERSONA O CON UN ABOGADO Y ENTREGAR A LA CORTE EN FORMA ESCRITA SUS DEFENSAS O SUS OBJECIONES A LAS DEMANDAS EN CONTRA DE SU PERSONA. SEA AVISADO QUE SI USTED NO SE DEFIENDE, LA CORTE TOMARA MEDIDAS Y PUEDE CONTINUAR LA DEMANDA EN CONTRA SUYA SIN PREVIO AVISO O NOTIFICACION. ADEMAS, LA CORTE PUEDE DECIDIR A FAVOR DEL DEMANDANTE Y REQUIERE QUE USTED CUMPLA CON TODAS LAS PROVISIONES DE ESTA DEMANDA. USTED PUEDE PERDER DINERO O SUS PROPIEDADES U OTROS DERECHOS IMPORTANTES PARA USTED. LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Servicio de referencia e información de abogados  
Colegio de Abogados del Condado de Lancaster  
28 E Calle Naranja  
Lancaster, Pensilvania 17602

ENTERED AND FILED  
PROTHONOTARY'S OFFICE  
LANCASTER, PA

\*\*\*Electronically Filed\*\*\*

Jul 11 2022 12:21PM

Ricci M. Dehl

**ROSENBAUM & ASSOCIATES, P.C.**

BY: Andrei Govorov, Esquire

Attorney I.D. No.: 209365

1818 MARKET STREET – SUITE 3200

PHILADELPHIA, PA 19103

(215) 569-0200

[agovorov@rosenbaumfirm.com](mailto:agovorov@rosenbaumfirm.com)

MAJOR-JURY

ASSESSMENT OF DAMAGES

HEARING IS REQUIRED

ATTORNEY FOR PLAINTIFF(S)

BRENDA L. KLING, ADMINISTRATRIX :  
of the ESTATE OF GERALDINE E. WIGGINS :  
deceased :  
19 Verbena Drive :  
Lancaster, Pennsylvania 17062 :

LANCASTER COUNTY  
COURT OF COMMON PLEAS

No.: \_\_\_\_\_

**CI-22-04128**

vs.

REHABILITATION CENTER at BRETHERN :  
VILLAGE, LLC :  
3001 Lititz Pike :  
Lititz, Pennsylvania 17543 :

And

BRETHREN VILLAGE :  
3001 Lititz Pike :  
Lititz, Pennsylvania 17543 :

And

BRETHREN VILLAGE REALTY, LLC :  
3001 Lititz Pike :  
Lititz, Pennsylvania 17543 :

And

LORI SCHOENER, NHA :  
3001 Lititz Pike :  
Lititz, Pennsylvania 17087 :

And

JOHN DOES 1-4 (Fictitious Names) :

**COMPLAINT**

Plaintiff, Brenda L. Kling, Administratrix of the Estate of Geraldine E. Wiggins, deceased, by and through their counsel, Rosenbaum & Associates, P.C., file this Complaint in Civil Action, and aver as follows:

1. Plaintiff, Brenda L. Kling, Administratrix of the Estate of Geraldine E. Wiggins, deceased, is an adult individual and daughter of Decedent, Geraldine E. Wiggins, residing herein at 19 Verbena Drive, Lancaster, PA 17602.

2. Decedent, Geraldine E. Wiggins, died intestate on August 28, 2021.

3. Plaintiff, Brenda L. Kling, were appointed Administratrix of the Estate of Geraldine E. Wiggins, deceased, by the Register of Wills of Lancaster County, on September 23, 2021, and in this capacity acts on behalf of the Estate, the beneficiaries of the Estate and the potential wrongful death beneficiaries.

**CI-22-04128**

4. At the time of her death, Decedent, Geraldine E. Wiggins, left surviving a daughter Brenda L. Kling, on whose behalf this claim is, in part, is filed.

5. Defendant, Rehabilitation Center Brethren Village, LLC, is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and was engaged in the business of owning, operating, managing and offering healthcare, medical services, rehabilitation and nursing care to the public at a rehabilitation and nursing home facility, Rehabilitation Center at Brethren Village, LLC, ("Brethren Village") 3001 Lititz Pike, Lancaster, Pennsylvania. Plaintiff is asserting a professional liability claim against this Defendant.

6. At all times material hereto, Defendant, Rehabilitation Center at Brethren Village, LLC, acted or failed to act by and through its agents, ostensible agents, servants, workmen, nurses, nurse's aides, and/or employees, physicians, the nursing home administrators and/or administrators responsible for formulating, adopting, monitoring and enforcing the policies, procedures and protocols of Brethren Village from the time Geraldine E. Wiggins was admitted to Brethren Village on April 13, 2021, including the physicians, nurses, nurses' aides, staff members and employees responsible for the care, supervision, treatment and safety of Geraldine E. Wiggins, starting on April 13, 2021, which includes those physicians, nurses, nurses' aides, staff and employees identified in the records and charts of Brethren Village, whose names cannot be discerned from the records but whose identities are known to and within the exclusive control of Defendants, as well as those physicians, nurses, nurses' aides, staff and employees whose names



are not recorded in the records due to Defendants' failure to implement and utilize proper record-keeping and documentation procedures but whose identities are known to and within the exclusive control of Defendants, all of whom were then and there acting within the scope of their authority and in the course of their employment with Defendant, Rehabilitation Center at Brethren Village, LLC, and in furtherance of Defendant, Rehabilitation Center at Brethren Village, LLC's business and on behalf of Defendant, Rehabilitation Center at Brethren Village, LLC.

7. Defendant, Brethren Village, is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and was engaged in the business of owning, operating, managing and offering healthcare, medical services, rehabilitation and nursing care to the public at a rehabilitation and nursing home facility, Rehabilitation Center at Brethren Village, LLC, ("Brethren Village") 3001 Lititz Pike, Lancaster, Pennsylvania. Plaintiff is asserting a professional liability claim against this Defendant.

8. At all times material hereto, Defendant, Brethren Village, acted or failed to act by and through its agents, ostensible agents, servants, workmen, nurses, nurse's aides, and/or employees, physicians, the nursing home administrators and/or administrators responsible for formulating, adopting, monitoring and enforcing the policies, procedures and protocols of Brethren Village from the time Geraldine E. Wiggins was admitted to Brethren Village on April 13, 2021, including the physicians, nurses, nurses' aides, staff members and employees responsible for the care, supervision, treatment and safety of Geraldine E. Wiggins, starting on April 13, 2021, which includes those physicians, nurses, nurses' aides, staff and employees identified in the records and charts of Brethren Village, whose names cannot be discerned from the records but whose identities are known to and within the exclusive control of Defendants, as well as those physicians, nurses, nurses' aides, staff and employees whose names are not recorded in the records due to Defendants' failure to implement and utilize proper record-keeping and documentation procedures but whose identities are known to and within the exclusive control of Defendants, all of whom were then and there acting within the scope of their authority and in the course of

**CI-22-04128**

their employment with Defendant, Brethren Village, and in furtherance of Defendant, Brethren Village's business and on behalf of Brethren Village.

9. Defendant, Brethren Village Realty, LLC, is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and was engaged in the business of owning, operating, managing and offering healthcare, medical services, rehabilitation and nursing care to the public at a rehabilitation and nursing home facility, Rehabilitation Center at Brethren Village, LLC, ("Brethren Village") 3001 Lititz Pike, Lancaster, Pennsylvania. Plaintiff is asserting a professional liability claim against this Defendant.

CI-22-04128

10. At all times material hereto, Defendant, Brethren Village Realty, LLC, acted or failed to act by and through its agents, ostensible agents, servants, workmen, nurses, nurse's aides, and/or employees, physicians, the nursing home administrators and/or administrators responsible for formulating, adopting, monitoring and enforcing the policies, procedures and protocols of Brethren Village from the time Geraldine E. Wiggins was admitted to Brethren Village on April 13, 2021, including the physicians, nurses, nurses' aides, staff members and employees responsible for the care, supervision, treatment and safety of Geraldine E. Wiggins, starting on April 13, 2021, which includes those physicians, nurses, nurses' aides, staff and employees identified in the records and charts of Brethren Village, whose names cannot be discerned from the records but whose identities are known to and within the exclusive control of Defendants, as well as those physicians, nurses, nurses' aides, staff and employees whose names are not recorded in the records due to Defendants' failure to implement and utilize proper record-keeping and documentation procedures but whose identities are known to and within the exclusive control of Defendants, all of whom were then and there acting within the scope of their authority and in the course of their employment with Defendant, Brethren Village Realty, LLC, and in furtherance of Defendant, Brethren Village Realty, LLC's business and on behalf of Brethren Village Realty, LLC.

11. Defendant, Lori Schoener, NHA, is an individual with a principal place of business at 3001 Lititz Pike, Lititz, Pennsylvania 17543. At all times material hereto, Defendant, Lori Schoener, was engaged in the business of owning, operating, managing and controlling nursing homes, including

Rehabilitation Center at Brethren Village, LLC, during the Decedent's residency. Defendant, Lori Schoener, was at all time materials and relevant hereto, the employer, supervisor and/or partner of all other Defendants listed herein, and is therefore personally, jointly and vicariously liable, among other things, for the acts and omissions of herself and her agents, employees, servants, contractors, staff, and/or partners and all other Defendants, all of whom played a role in the operation of Rehabilitation Center at Brethren Village, LLC and the care provided to the Decedent.

12. Defendants, Joe Does 1-4 (Fictitious Names) are individuals, corporations and/or other entities whose identities, after reasonable investigation, are currently unknown, but at all times relevant hereto owned, operated, controlled and/or managed Rehabilitation Center of Brethren Village, LLC and/or provided medical, nursing, rehabilitation and other health care services to Geraldine E. Wiggins during her admission to Rehabilitation Center of Brethren Village, LLC.

13. At all times material hereto, the Defendants individually and collectively owed duties to the residents of Brethren Village, including Geraldine E. Wiggins.

14. At all times relevant and material hereto the Defendants were aware of their obligations under the laws of the United States of America and of the Commonwealth of Pennsylvania with which Defendants were required to comply in providing care to Decedent including the United States Code, Pennsylvania Consolidated Statutes and the Pennsylvania Administrative Code.

15. The Defendants, directly and/or through their respective agents, servants and/or employees, accepted the responsibility for the care of Geraldine E. Wiggins, and in so doing, undertook and/or assumed a duty to Geraldine E. Wiggins to provide a safe nursing home facility necessary for the proper practice of medicine at said rehabilitation facility and to render reasonable, competent, proper, adequate and appropriate medical care, rehabilitation and nursing care, custodial care, rehabilitation services and treatment and, to take appropriate, preventative and curative measures as well as adequately supervise, monitor, and provide timely treatment and services to Geraldine E. Wiggins, and avoid and prevent harm to her.

16. The Defendants owed a duty to Geraldine E. Wiggins to exercise reasonable and ordinary

**CI-22-04128**

care as a resident at Defendants' facility receiving medical, nursing, rehabilitation and other allied healthcare services. The Defendants' duties included, but were not limited to, establishing and enforcing their respective nursing home facility rules and regulations, medical staff practices, bylaws, policies, procedures, rules and regulations which mandate provision of proper medical, nursing and other healthcare provider services and/or care to the rehabilitation patients, including Geraldine E. Wiggins. The Defendants' duties also included hiring competent medical, nursing and other allied healthcare personnel, continuing and ongoing review of said competency, maintaining the facility such that it is free from ordinary hazards and defective equipment, maintaining sufficient staffing levels, insuring that all patients receive adequate, competent and timely medical, rehabilitation and other allied health care treatment and services while a patient at their rehabilitation facility, and, establishing and enforcing policies, procedures, protocols and systems to monitor their staff to ensure that all patients are receiving proper and timely care and treatment including, but not limited to, complete and accurate resident assessments, developing, enforcing and revising individualized, resident-centered care plans, adequate supervision/monitoring, proper use of medication, proper use of physical and/or chemical restraints, proper establishment and enforcement of procedures for medical and nursing review and/or audit of the care given to patients, proper establishment of policies, procedures, protocols and guidelines to ensure that proper medical, rehabilitation, custodial and nursing care are performed on and for patients at their facility, including Geraldine E. Wiggins.

**CI-22-04128**

17. At all times relevant hereto, the Defendants, directly and/or through contractual agreement had a corporate responsibility through their respective bylaws, medical staff bylaws, rules, regulations and ongoing government functions to assure that only competent physicians, nurses and other health care providers engage in the medical, rehabilitation and nursing practice at this rehabilitation facility and other related fields of medicine on the Defendants' premises.

18. Defendants have failed to adequately train and/or supervise their physicians, nurses, nurses' aides and other healthcare providers which has resulted in personal harm and injury to Geraldine E. Wiggins.

19. The provisions of OBRA (Omnibus Budget Reconciliation Act of 1987) are applicable



with regard to Geraldine E. Wiggins' condition as it existed while in the Defendants' care and during her admission at the Defendants' facility beginning on April 13, 2021.

20. The Defendants held themselves out as a specialist in the field of rehabilitation care with the expertise necessary to maintain the health and safety of persons unable to care adequately for themselves.

21. At all times pertinent hereto, Geraldine E. Wiggins was a patient at Rehabilitation Center of Brethren Village, LLC and was under the exclusive care and control of the Defendants, their agents, officers, servants and/or employees.

**CI-22-04128**

22. The Defendants, their agents, officers, servants and/or employees failed, refused and/or neglected to perform the duties to provide reasonable and adequate health care to and for Geraldine E. Wiggins who was unable to attend to her own health, safety and well-being.

23. The Defendants, their agents, officers, servants and/or employees negligently, carelessly and recklessly provided care and treatment to Geraldine E. Wiggins, and all of the alleged acts, omissions and occurrences herein described or performed by the Defendants, their agents, officers, servants and/or employees fell within the course and scope of their agency and employment with the Defendants and in furtherance of the Defendants' business.

24. The Defendants provide twenty-four (24) hour a day, seven (7) day a week medical, nursing, custodial and rehabilitation care, services and assistance to its patients who have issues related to age, illness, disease, injury, convalescence and physical and mental infirmity.

25. The Defendants are responsible for nearly all the health care needs of their residents, including but not limited to, assistance with activities of daily living, bed mobility, transfer, ambulation, personal hygiene, nutrition, hydration, restorative care, incontinence care, turning and repositioning, supervision, monitoring, safety and rehabilitation.

26. The Defendants are responsible for ensuring that all doctor-ordered testing and medical services are performed.

27. The Defendants are required to conduct comprehensive and accurate assessment of their

patients' functional capacity, as well as their patients' needs and risk factors.

28. The Defendants are required to formulate and develop an individualized health "Care Plan" upon admission of each patient.

29. The Defendants are responsible for determining patients' risk level for injury including falls.

30. The Defendants are responsible for formulating, adopting, modifying and implementing injury prevention programs and care directives, including prevention programs for patients at risk for falls.

**CI-22-04128**

31. The Defendants are responsible for ensuring that injury prevention programs, procedures and protocols are implemented, executed and performed including prevention programs and procedures to prevent falls.

32. The Defendants are responsible for ensuring that a "Care Plan" is personalized for each patient and modified and/or revised as needs change.

33. The Defendants are responsible for ensuring that a "Care Plan" for patients includes safety measures and interventions to prevent falls.

34. The Defendants are responsible for ensuring that safety measures and interventions, including adequate pressure-relieving assistive devices, individualized turning and repositioning schedule, implementation of the appropriate infection control policies, procedures and techniques, hydration and nutrition protocols, adequate and timely incontinence care, hygiene services, adequate supervision and monitoring of patients with decreased mobility, safety awareness and cognition are implemented and executed.

35. Geraldine E. Wiggins, was admitted to Rehabilitation Center at Brethren Village, LLC on April 13, 2021 with diagnoses that included ambulatory dysfunction, generalized weakness and new onset A-Fib.

36. A "Fall Risk Assessment" was completed at time of admission and Geraldine E. Wiggins was considered at risk for falls related to a score of "26" (*a resident whose score is over 9 is at risk for falls*).

37. The "History of Present Illness" documented Geraldine E. Wiggins' reason for admission to Brethren Village as:

*Geraldine Wiggins is a 92 y.o. female admitted to nursing facility for ambulatory dysfunction having 2 falls at home prior to observation stay at LGH, for further PT/OT evaluation and treatment. Has had right knee pain since falls at home, XR in hospital negative for fracture. Today, states she feels a little hot and is tired, but otherwise she denies any pain, palpitation/flutter in chest, SOB, change in bowel or bladder.*

39. The staff at Brethren Village was aware of the patient's need for assistance with ambulation, activities of daily living and fall prevention as documented on the "Care Plan" for "Needs staff assistance for ADL's because of weakness" and "Has history of falls, potential for fall-related injury."

40. The following are some of the interventions the staff was to utilize to provide care and prevent falls for this patient:

*\* Be aware resident unable to independently bathe, dress, move self in bed, transfer, ambulate, toilet self, perform personal hygiene measures and feed self*

*Ambulate in hallway with rolling walker and one/two assist with gaitbelt*

*Encourage and assist resident as needed to bathroom upon rising, between meals and at bedtime*

*Observe for and report any decline in ADL performance; record appropriately in the EMR*

*One/Two assist for stand/pivot/weight bear between all support surfaces*

*Set up in bathroom at sink with supplies for grooming and bathing with assist as needed*

*My transfer status is stand and pivot Ax1 w/RW*

*Assist with ADL's, transfers and locomotion as needed, utilizing safety measures*

*Remind resident of the importance of asking for help before getting up or transferring, especially if he/she feels lightheaded or weak*

*When finding resident attempting to transfer independently, assess for basic needs, i.e., food, fluid, toileting, pain, boredom/anxiety*

40. Pursuant to medical records, Brethren Village increased their staff's workload related to Covid-19 precautions. But, despite the increase in staff workload, the staff of Brethren Village was well aware Geraldine E. Wiggins required one staff member and her assistive device to ambulate and transfer

safely.

41. The staff was also aware that the patient self-transferred but did not intervene or initiate additional interventions to prevent falls for this patient.

42. The April 24, 2021 "Statement Form" documented *"when I took care of Geraldine this morning caught her in the bathroom by herself she told me she took herself and at the time I didn't see a bruise."*

43. The patient's risk of falls was increased due to episodes of *"respiratory distress"* documented on the April 28, 2021 "MD Progress Notes" as *"Geraldine complained of shortness of breath this morning and was found to be hypoxic. Her SpO2 at the time was in the mid to high 80's and improved to the low 90s with supplemental oxygen."*

44. On May 3, 2021, "Physician's Orders" documented *"resident wheezing", "O2 sat 84%, lungs very diminished."*

45. A May 7, 2021 "MD Progress Note" revealed the patient's increased weakness during the morning hours as:

*Geraldine Wiggins is a 92 y.o. female seen and examined in her room on the rehabilitation unit, resting in her recliner chair. She reports she is feeling short of breath on exam. She admits to just waking up and ambulating which is when she often feels dyspnea.*

*She attests to being more tired in the mornings and feeling better as the day goes on.*

*Ambulatory Dysfunction: Geraldine reports therapy is going well, but that she does not feel ready to go home next week. PT reporting, she can ambulate up to 150 ft with four wheel walker and staff assistance, seems to have increased weakness and decreased functional status in the early morning. Will be discharged to personal care when appropriate, no discharge date set at this time. Continue PT/OT, continue to monitor.*

46. Geraldine E. Wiggins demonstrated a significant cognitive decline on May 9, 2021, documented in the "Progress Notes" as *"Res has been noted by staff to have been confused today. She had woken up several times unaware of where she was or what time of day it had been. Urine has fowl odor and is dark in color. Sip & dip initiated."*

47. A May 10, 2021 "Progress Note" further documented *"Safety concerns: Yes. Safely*

**CI-22-04128**



*Concerns – note: Confusion and forgetfulness.”*

48. “Medication Administration Record” reveal a “Physician Order” dated May 10, 2021 for, “d/c functional abilities days 1-3 every day shift until 05/12/2021.” The MAR had the days of May 10, 11, and 12 highlighted to carry out the physician’s order.

49. Despite the fact the patient required staff assist for ambulation and activities of daily living, increased confusion, increased weakness and decreased functional ability in the morning hours and ordered to have her functional abilities discontinued on May 12, the staff of Brethren Village left Geraldine E.

**CI-22-04128**

Wiggins alone at the bathroom sink on May 12, 2021 at 7:30AM.

50. The May 12, 2021 “Progress Note” documented the following:

*Patient on floor near at the foot of her recliner with walker in front of her and bed side table behind her. The back of her head was bleeding. We got her up off the floor and onto the chair. There was a quarter sized hematoma with small laceration to the base of the skull. Patient had been standing at the sink brushing her teeth when the CNA left her in the bathroom to take care of another patient who was having blood sugar issues. Patient then attempted to walk to the recliner to sit down and as she did she lost her balance falling backwards hitting her head on the base of the bedside table. First aid attempted with neuro and physical assessment. No other injuries noted. Pressure was applied to laceration for 15 minutes and continued to profusely bleed. MD called and order obtained to send to ER. Pressure applied for another 25 minutes until ambulance arrived to transport to LGH ER for evaluation at 0820 by MT ambulance. Denies pain. Neuro checks WNL. Daughter aware.*

51. Geraldine E. Wiggins was left alone despite the Plan of Care revealing the patient required staff assistance, despite the medical provider documenting “increased weakness and decreased functional status in the early morning,” despite her new onset of confusion, and the need for functional abilities to be temporarily discontinued.

52. The May 12, 2021 “Incident Report” documented Geraldine E. Wiggins’ “Predisposing Physiological Factors” as “Gait Imbalance, Impaired Memory” and her “Predisposing Situation Factor” as “Ambulating without assist”.

53. Geraldine E. Wiggins was transferred to Lancaster General Hospital on May 12, 2021. The Emergency Department Records reveals the following information:

- Chief Complaint: Head Injury, Fall Evaluation

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*- Arrives via BLS amb from rehab center at Brethren Village after falling and striking head on corner of bedside nightstand.*

*With hematoma to posterior head.*

*ECF staff "couldn't get bleeding to stop" after holding pressure for 45 minutes.*

*EMS reports bleeding through ABD pad that was placed by them.*

*+ Plavix use.*

**CI-22-04128**

*Denies any abd, chest, back or neck pain.*

*HPI: patient is a 92-year-old female who presents after a fall. It was unwitnessed. She does have some mild confusion making history of present illness limited. The patient cannot tell me why she fell. She said, "I thought I can make it over to the chair."*

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*MDM: Patient presents with occipital hematoma with mild oozing. On my exam the patient was awake and alert but pleasantly confused. She did have an occipital hematoma with a small open wound. Figure-eight suture placed by physician's assistant. Bleeding subsided. Patient noted to have a C7 fracture. Cervical collar applied. She had no neck pain. Case discussed with the trauma service who recommended imaging of her chest abdomen pelvis. I also ordered basic bloodwork. Disposition is pending their evaluation. Patient remained comfortable in the ER.*

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*CT Angiogram Chest: Since the prior study, the patient has suffered mild superior endplate compression fractures at C7 and T1. A superior endplate compression fracture at T2 is stable. Multiple new compression fractures, most notable at the T7 level.*

54. The May 12, 2021 "Neurosurgery Note" documented the "Impression/Plan" as "*Acute fracture C7, T1 with no significant retropulsion*", "*Currently oriented to person only*", "*No surgical intervention needed*" and "*Aspen Cervical collar OK per Dr. Hernandez.*"

55. Geraldine E. Wiggins was readmitted to Brethren Village from Lancaster General Hospital.

56. On May 15, 201, Speech Therapy documented Geraldine E. Wiggins as "*referred by physician for speech swallow evaluation. Patient exhibiting difficulty completing meals and rotary chew for regular diet intake. The functional deficits are caused by generalized weakness, decreased range of motion from C Collar placement.*"

56. The vertebral fracture and need for a cervical collar interfered with her meal consumption.

57. Geraldine E. Wiggins died on August 28, 2021 with failure to thrive listed at the cause of death.

58. Decedent suffered horrific injuries as a consequence of the negligence, neglect and abuse by Defendants, and/or Defendants' real and/or ostensible servants, agents and/or employees.

59. The negligence, neglect and abuse of Geraldine E. Wiggins by Defendants, and/or Defendants' agents and resulting injuries caused a significant decline in Decedent's clinical status and were significant contributing factors in causing Decedent's death.

**CI-22-04128**

60. The severity of the negligence, neglect and abuse inflicted upon Geraldine E. Wiggins by the Defendants' mismanagement, improper under-budgeting, understaffing of the facility and lack of training and/or supervision of the facility's employees, failure to provide adequate and appropriate health care, engaging in incomplete, inconsistent and fraudulent documentation, failure to develop and implement an appropriate care plan, failure to conduct accurate patient assessment, failure to ensure the highest level of physical, mental and psychosocial functioning was attained or maintained, failure to provide appropriate monitoring, supervision, care and services caused Decedent to experience, a fall, hematoma to skull, head laceration, C7 and T1 fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

61. As a direct result of the Defendants' negligence, neglect, abuse, carelessness and recklessness herein described, Decedent was caused to suffer serious and permanent injuries as described herein, including a fall, hematoma to skull, head laceration, C7 and T1 fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

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**CONDUCT OF THE DEFENDANTS**

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62. Plaintiff hereby incorporates by reference the prior paragraphs as if they have been more fully set forth herein.

63. During the course of her admission, Geraldine E. Wiggins was incapable of independently providing for all of her daily care and personal needs without reliable assistance.

64. At all relevant times, the Defendants, through their agents, servants, employees and/or representatives: (a) should have been and/or were aware of Geraldine E. Wiggins' needs and (b) represented that they could adequately care for her needs.

**CI-22-04128**

65. In exchange for money, Geraldine E. Wiggins was admitted to the Defendants' care at Yeadon Rehabilitation and Nursing Center to obtain such care and protection.

66. The Defendants, upon information and belief, were controlled by a board of directors who were responsible for the operation, planning, management and quality control of Brethren Village.

67. At all relevant times, the Defendants, individually, and/or through their agents, servants and employees, assessed the needs of Geraldine E. Wiggins and promised that they would adequately care for her needs, akin to a hospital.

68. The Defendants were responsible for the operation, planning, management and quality control of their facility.

69. The control exercised over the Defendants' facility by the Defendants, included: budgeting, marketing, human resource management, training, staffing and the creation and implementation of all policy and procedure manuals used by Brethren Village.

70. The Defendants controlled reimbursement, quality care assessment and compliance, licensure, certification, and all financial, tax and accounting issues through control of the fiscal policies of Brethren Village.

71. Upon information and belief, the corporate officers of Defendants utilized survey results and quality indicators to monitor the care being provided at their nursing homes, including Brethren Village.

72. Upon information and belief, the Defendants, including their owners, officers, directors,



partners, members, managers and employees knew that Rehabilitation Center at Brethren Village, LLC has been cited by governmental units as follows:

1/23/2020: failed to assess a pressure ulcer for one of one residents reviewed; and

8/12/2021: failed to comprehensively assess and administer medication to a wound; and timely administer wound treatment to a sacral wound for one of seven residents reviewed.

73. As a direct and proximate result of the Defendants' acts and omissions, and their breach of the duty of care, negligence, carelessness and recklessness, Decedent suffered: (a) severe permanent physical injuries resulting in pain, suffering, and disfigurement; (b) mental anguish, embarrassment, humiliation, degradation, emotional distress, and loss of personal dignity; (c) loss of capacity for enjoyment of life; (d) expense of otherwise unnecessary hospitalizations and medical care; and (e) death.

**CI-22-04128**

74. In causing the aforesaid injuries, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

75. The conduct of the Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

76. At all relevant times, the Defendants, individually, and/or through their agents, servants and employees, assessed the needs of Geraldine E. Wiggins, and promised that they would adequately care for her needs, akin to a hospital.

77. At all relevant times, the Defendants made a conscious decision to operate and/or manage their facility so as to maximize profits at the expense of the care required to be provided to their patients, including Geraldine E. Wiggins.

78. In their efforts to maximize profits, the Defendants reduced staffing levels below the level necessary to provide adequate and timely care and services to their patients, including Geraldine E. Wiggins.

79. Upon information and belief, the Defendants caused staffing levels at their facility to be set at a level such that the personnel on duty at any given time could not and did not reasonably and timely tend to the needs of their assigned patients, including Geraldine E. Wiggins.

80. Upon information and belief, the Defendants intentionally increased the number of sick and frail residents with greater health problems requiring more complex care.

81. The Defendants knew that the increase in the acuity care levels of the patient population would substantially increase the need for staff, services and supplies necessary for the patient population.

82. The Defendants failed to provide the resources necessary, including sufficient staff, services and supplies, to meet the needs of their patients, including Geraldine E. Wiggins.

83. The Defendants negligently, carelessly and recklessly caused the healthcare providers, nurses and nurses' aides who they placed and/or staffed at their facility to be so unqualified and/or under-trained, that the personnel on duty at any given time could not and did not reasonably and timely tend to the needs of their assigned patients, including Geraldine E. Wiggins.

84. The aforementioned acts and omissions directly caused and/or increased the risk of the injuries and harm to Geraldine E. Wiggins and were known by the Defendants.

85. At all relevant times, the facility was individually owned, and/or in concert owned, possessed, managed, controlled, operated and maintained under the exclusive control of the Defendants.

86. At all relevant times, the Defendants were operating individually or through their managers, members, partners, officers, agents, servants and employees who had actual, apparent and/or ostensible authority, and all of whom were acting within the course and scope of their employment and under the direct and exclusive control of the Defendants.

87. The aforementioned injuries, acts and omissions were caused solely and exclusively by reason of negligence, carelessness and recklessness of the Defendants, and their agents, servants and employees and were due in no part to any act or omission to act on the part of Geraldine E. Wiggins.

88. The Defendants exercised complete and total control over the total and complete healthcare of all the patients of their facility, including Geraldine E. Wiggins, akin to a hospital.

**CI-22-04128**

COUNT I – NEGLIGENCE  
BRENDA L. KLING, ADMINISTRATRICES OF  
THE ESTATE OF GERALDINE E. WIGGINS, DECEASED

v.

REHABILITATION CENTER AT BRETHREN VILLAGE, LLC, BRETHREN VILLAGE,  
BRETHREN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4

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89. Plaintiff incorporate by reference herein the allegations contained in the preceding paragraphs of this Complaint, as though same were fully set forth at length herein.

90. Upon accepting Geraldine E. Wiggins as a patient at their facility, the Defendants, **CI-22-04128** individually and jointly, assumed direct duties to provide her with adequate, timely and appropriate healthcare and other basic custodial services as set forth herein.

91. The Defendants had the ultimate responsibility to ensuring that the rights, safety, welfare and well-being of their patients, including Geraldine E. Wiggins, were protected.

92. The Defendants owed a duty to provide adequate, timely and appropriate healthcare and related skilled nursing, custodial, restorative, therapy and rehabilitation care and services to their patients, including Geraldine E. Wiggins, such as reasonable caregivers would provide under similar circumstances.

93. The Defendants each owed duty to their patients, including Geraldine E. Wiggins, to hire, train, oversee and supervise their employees to ensure that its facility was operated, and services were provided, to their patients in a safe and reasonable matter.

94. The Defendants each owed a duty and responsibility to furnish Geraldine E. Wiggins with appropriate, timely and competent medical, nursing and custodial care and services.

95. The Defendants each owed and failed to fulfill the following duties and responsibilities to Geraldine E. Wiggins:

- i) The duty to use reasonable care in the maintenance of safe and adequate facility;
- ii) The duty to select, hire, train and retain only competent staff;
- iii) The duty to oversee, monitor and supervise all persons who practice nursing and/or medical healthcare within their facility;
- iv) The duty to staff their facility with sufficient and adequately trained personnel to provide the care and services required by their facility's patients;

- v) The duty to maintain sufficient staffing, funding, supplies and resources for the facility to meet the needs of their facility's patients;
- vi) The duty to formulate, adopt, oversee, revise and enforce rules, policies, procedures and protocols to ensure quality of care for all their facility's patients;
- vii) The duty to take adequate, timely and appropriate measures to correct the known problems with quality of care, as well as the known problems with the delivery of medical, nursing and custodial care and services;
- viii) The duty to keep their facility's patients free and safe from abuse and neglect;
- ix) The duty to provide safe, decent and clean environment for their facility's patients; and
- x) The duty to warn their facility's patients, as well as their families and/or responsible parties, of the Defendants' inability to provide adequate, timely, appropriate and safe care and services when the Defendants were placed on notice, knew, or should have known, of the deficiencies in providing such care and services to and for their patients.

**CI-22-04128**

96. In addition to the direct acts and omissions of the Defendants, the Defendants also acted through their agents, servants, officers and employees, who were in turn acting within the course and scope of their employment, in furtherance of the Defendants' business and under the direct control and supervision of the Defendants.

97. All of the acts alleged to have been done or not to have been done by the Defendants were done or not done by said Defendants, their agents, ostensible agents, servants, workmen and/or employees, acting in the course and scope of their employment with and on behalf of said Defendants and failed or refused to act with reasonable care in the following manner:

- a. violating their duty to provide adequate resident care, including but not limited to diagnosis, evaluation, assessment, supervision, monitoring, medication and treatment monitoring, medication and treatment to and for Geraldine E. Wiggins;
- b. failing to accurately assess and recognize Decedent's risk falls;
- c. failing to order, implement and utilize necessary fall prevention initiatives;
- d. implementing ineffective fall precautions for a cognitively impaired resident;
- e. allowing Decedent to self-transfer;
- f. failing to order, implement and utilize initiatives to prevent Decent from unsupervised self-transfers;
- g. failing to discontinue functional abilities;



- h. leaving Decedent standing unsupervised in the bathroom;
- i. failing to supervise Decedent to prevent falls;
- j. failing to monitor Decedent to prevent falls;
- k. failing to provide for Decedent's safety, welfare and well-being to keep her free from falls;
- l. failing to prevent Decedent from falls;
- m. causing Decedent to sustain traumatic head injuries;
- n. causing Decedent to sustain hematoma to her head;
- o. causing decedent to sustain laceration to her head;
- p. causing Decedent to require stitches to head laceration;
- q. causing Decedent to sustain C7 and T1 spinal fractures;
- r. causing Decedent's to require a cervical collar;
- s. failing to accurately assess and recognize Decedent's risk of functional deficits related to use of cervical collar;
- t. failing to order implement and utilize a "Care Plan" to ensure adequate nutritional intake;
- u. failing to ensure Decedent maintained adequate nutritional intake while utilizing cervical collar;
- v. failing to order, implement and utilize nutritional supplements;
- w. failing to encourage nutritional intake;
- x. causing Decedent to experience weight loss;
- y. causing decedent to experience failure to thrive;
- z. failing to make the appropriate, thorough and timely assessment of Decedent's condition;
- aa. failing to seek timely medical care when Decedent's condition required same;
- bb. failing to properly train and supervise Defendant's actual or ostensible employees, servants, agents or other staff or healthcare providers to monitor Decedent and to provide for her safety, welfare and general well-being;
- cc. failure to properly hire, train and supervise staff, employees and healthcare providers at Defendant's facility;
- dd. failing to monitor the competency, adequacy and propriety of the treatment rendered by their

**CI-22-04128**

agents, servants and employees provided care and treatment to Decedent while a patient at Defendants' facility;

- ee. failing to maintain Defendants' duty to formulate, adopt and enforce adequate policies, procedures and protocols to ensure that their facility's patients, including Decedent, are properly supervised, assessed, monitored and receive proper and timely medical custodial and nursing care;
- ff. failing to maintain Defendants' duty to formulate, adopt and enforce adequate policies, procedures and protocols to ensure that their facility's patients, including Decedent, are properly supervised, monitored and receive proper medical, custodial and nursing care to keep her free from falls;
- gg. failing to administer the facility in a manner that enabled it to use its resource effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of the facility's patients, including Decedent;
- hh. failing to ensure that the Defendants used the results of its assessments to develop, review and revise Decedent's "Care Plan";
- ii. failing to ensure that Defendants' facility had sufficient nursing staff to provide nursing and custodial care and services to the patients in order to attain or maintain the highest practicable, physical, mental and psychosocial well-being of each patient including Decedent;
- jj. failing to maintain compliance with the governmental rules and regulation to which Defendants' delivery of care is compare as part of the survey process conducted by the Pennsylvania Department of Health;
- kk. failing to make the appropriate, thorough and timely assessment of Decedent's condition;
- ll. failing to properly select, retain and monitor the competency of the medical and nursing staff, their employees, agents, servants and other healthcare providers who treated Decedent and failing to ensure such persons provided care within the applicable standards of care;
- mm. failing to keep Decedent free from neglect and abuse;
- nn. failing to take appropriate steps to remedy continuing problems at the Defendants' facility that Defendants knew, or had reason to know, were occurring ; with Decedent's care, which included the need to increase the number of the facility's employees, hiring skilled and trained employees, adequately train and supervise the current employees, monitoring conduct of the employees, and adopting new or changing the existing policies, procedures and protocols to ensure care provided was provided within the appropriate community standards;
- oo. making false, fraudulent, inadequate and inconsistent notes in Decedent's chart;
- pp. failing to obtain new or modified "Physicians' Orders" when changes in Decedent's condition were recognized by Defendants' agents;

**CI-22-04128**

- qq. failing to accurately, timely and consistently document Decedent's needs and the care and services provided to her in response to such needs;
  - rr. violating Pennsylvania Statutes, Pennsylvania Administrative Regulations, as well as OBRA regulations;
  - ss. grossly understaffing Defendants' facility;
  - tt. failing to train the employees to recognize medical conditions/symptoms which required Decedent's transfer to the hospital ;
  - uu. failing to allocate adequate funds, resources and supplies and failure to implement a facility budge that provided for the necessary and sufficient funds, resources and staffing levels to enable and allow their facility to provide adequate, timely appropriate care and services to the facility's residents, including Decedent;
  - vv. failure to recognize and investigate neglect and abuse occurring with the care and services provided and not provided to Decedent, and failure to report such neglect and abuse to the appropriate governmental agencies;
  - ww. all of the acts or failure to act constitute a deviation from the appropriate standards of care, negligence, carelessness and reckless indifference to the health, safety, welfare and well-being of Decedent;
  - xx. Defendants' conduct caused harm to Decedent and increased the risk of harm to her; and
  - yy. in committing the aforementioned acts and omissions, Defendants were acting negligently, carelessly and with reckless indifference to the safety, welfare and well-being of Decedent.
98. Upon information and belief, the Defendants, including their owners, members, managers, officers, directors and partners knew of and/or were made aware of the Pennsylvania Department of Health annual and complaint survey results and placed on notice of the status of their Rehabilitation Center, Brethren Village.
99. At all times relevant to this lawsuit, the Defendants employed and directed physicians, nurses and other medical personnel who rendered care to Geraldine E. Wiggins.
100. At all times relevant to this lawsuit, the Defendants owed a duty to Geraldine E. Wiggins to provide competent and qualified physicians, surgeons, nurses, nurses' aides and other medical and quasi medical personnel to render proper care to her.
101. At all times relevant to this lawsuit, the Defendants owed Geraldine E. Wiggins a duty to operate their rehabilitation facility in a careful and reasonable manner, under the circumstances, as would

CT-22-04128

have been done by other rehabilitation facilities in and about the Pennsylvania area.

102. At all times relevant to this lawsuit, Defendants and their agents, staff and employees, owed Geraldine E. Wiggins the duty to possess and exercise that degree of skill and knowledge ordinarily possessed and exercised by similar rehabilitation, physicians and/or nurses in and about the Pennsylvania area.

103. At all times relevant hereto, Geraldine E. Wiggins' care was to be delivered and administered by medical staff, nursing staff and healthcare staff at the Defendants' rehabilitation facility in a reasonably safe and prudent manner within the applicable standards of care for the community, as well as state and federal nursing home facility rules and regulations.

**CI-22-04128**

104. Geraldine E. Wiggins was a resident at Defendants' rehabilitation facility and the Defendants negligently and carelessly and in wanton and willful disregard for her health, safety and general welfare, inflicted injury upon her in failing to timely provide appropriate and necessary medical, nursing, rehabilitation and custodial care, adequate monitoring and supervision.

105. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendants, as is more fully set forth herein, Geraldine E. Wiggins experienced, a fall, hematoma to skull, head laceration, C7 and T1 fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

106. Geraldine E. Wiggins experienced severe and excruciating pain and suffering as the result of the aforesaid negligent, careless and reckless conduct of the Defendants, and Defendants' agents, and their breach of the duty of care as set forth herein.

107. In causing the aforesaid injuries, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

108. Pennsylvania Code Chapter 28, Section 201 *et. seq.*, requires Defendants comply with all federal, state and local regulations with regard to long-term care facilities.



109. The Defendants violated OBRA regulations, which establish the minimum standard of care to be followed by Defendants, including but not limited to the following:

- (a) 42 C.F.R. § 483.10 (a)(1) / § 483.10 the patient has a right to a dignified existence;
- (b) 42 C.F.R. § 483.12 / § 483.13 (b) & (c) the patient has the right to be free from abuse, neglect, misappropriation of patient property, and exploitation as defined in this subpart;
- (c) 42 C.F.R. § 483.12 (c)(1) / § 483.13(c)(2) the facility must ensure that all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of patient property, are reported immediately, but not later than 2 hours after the allegation is made, if the events that cause the allegation involve abuse or result in serious bodily injury, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury, to the Administratrices of the facility and other officials (including to the State Survey Agency and adult protective services where state law provides for jurisdiction in long-term care facilities) in accordance with State law through established procedures;
- (d) 42 C.F.R. § 483.20 (2)(ii) the facility must conduct an assessment after a significant change in patient's condition;
- (e) 42 C.F.R. § 483.21 (b)(b) / § 483.20(k) Comprehensive Care Plans, the facility must develop and implement a comprehensive person-centered care plan for each patient, consistent with the patient rights, that includes measurable objectives and timeframes to meet a patient's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment;
- (f) 42 C.F.R. § 483.24 / § 483.25 each patient must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, consistent with the patient's comprehensive assessment and plan of care;
- (g) 42 C.F.R. § 483.25 (b)(i) / (ii) / § 483.25 (c)(1)(2) Based on the comprehensive assessment of a resident, the facility must ensure that (i) A resident receives care, consistent with professional standards of practice, to prevent pressure ulcers and does not develop pressure ulcers unless the individual's clinical condition demonstrates that they were unavoidable; and (ii) A resident with pressure ulcers receives necessary treatment and services, consistent with professional standards of practice, to promote healing, prevent infection and prevent new ulcers from developing.
- (h) 42 C.F.R. § 483.25 (d)(2) / § 483.25 (h)(2) each patient receives adequate supervision and assistance devices to prevent accidents;
- (i) 42 C.F.R. § 483. 35 (a) / § 483. 30(a)(1) the facility must provide services by sufficient number of each of the following types of personnel on a twenty-four (24)

CI-22-04128

hour basis to provide nursing care to all patients in accordance with patient care plans; and

- (j) 42 C.F.R. § 483.70 (b) / § 483.75 (b) The facility must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.

110. Geraldine E. Wiggins fell within the class of persons the statutory rules, regulations and laws that were intended to protect by virtue of OBRA Regulations and the Pennsylvania Code 28 §§ 201, *et. seq.*, thus entitling Plaintiff to adopt such laws as the standard of care for measuring Defendants' conduct.

**CI-22-04128**

Thus, Plaintiff assert a claim for negligence *per se*, asserting that, as a matter of law, the conduct of the Defendants amounted to negligence and negligence *per se*.

111. At all relevant times pertinent hereto, there was in full force and effect 18 Pa.C.S.A. § 2713 "Neglect of Care Dependent Person", providing penal consequences for neglect of a care-dependent person for:

*Intentionally, knowingly or recklessly causes bodily injury or serious bodily injury by failing to provide treatment, care, goods or services necessary to preserve the health, safety or welfare of a care-dependent person for whom he is responsible to provide care.*

112. 18 Pa.C.S.A. § 2713 "Neglect of Care Dependent Person" expresses the fundamental public policy of the Commonwealth of Pennsylvania that older adults, like children, are not to be abused or neglected, particularly in health care facilities or by persons holding themselves out as trained professionals, and that if such neglect or abuse causes injury, either physical or mental, then such conduct is actionable.

113. At all relevant times pertinent thereto, Geraldine E. Wiggins was a care-dependent resident at Defendants' facility and as such, fell within the class of persons 18 Pa.C.S.A. §2713 "Neglect of Care Dependent Person" was intended to protect, and as such, entitling Plaintiff to adopt 18 Pa.C.S.A. § 2713 "Neglect of Care Dependent Person" as the standard of care for measuring the conduct of the Defendants.

114. Furthermore, 18 Pa.C.S.A. § 2713 "Neglect of Care Dependent Person" is directed to obviate the specific kind of harm which Geraldine E. Wiggins sustained, with its purpose, at least in part, to protect the interest of a group of individuals, i.e., *care-dependent persons*, including Geraldine E.

Wiggins.

115. Defendants, in accepting the responsibility for providing for Geraldine E. Wiggins' care, welfare and well-being, as mentioned herein, and were negligent *per se* as they violated 18 Pa.C.S.A. § 2713 "Neglect of Care Dependent Person" in that they failed to provide treatment, care, goods and services necessary to preserve the health, safety or welfare of Geraldine E. Wiggins, for whom they were responsible to provide care as specifically set forth in this Complaint.

116. The conduct of the Defendants was intentional, outrageous and willful and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

117. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demand judgment in their favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT II – VICARIOUS LIABILITY  
BRENDA L. KLING, ADMINISTRATRICES OF  
THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

**v.**

**REHABILITATION CENTER AT BRETHREN VILLAGE, LLC, BRETHREN VILLAGE,  
BRETHREN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4**

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118. Plaintiff incorporate by reference herein the allegations contained in the receding paragraphs of this Complaint as though same were fully set forth at length herein.

119. At all times relevant hereto, Defendants' agents, servants, employees and others were acting in the scope of their employment as agents, servants or employees of Defendants' nursing and rehabilitation facility.

120. Defendants are vicariously liable for the acts, commissions or omissions, of their physicians, nurses, nurses' aides and other medical personnel and healthcare providers fully as though the aforementioned physicians, nurses, nurses' aides and other medical personnel and healthcare providers performed the acts or omissions themselves. In the alternative, the Defendants are responsible for the

**CI-22-04128**

negligent acts or omissions of other physicians, nurses, nurses' aides and other healthcare providers who are agents, employees and/or servants of the Defendants.

121. At all times relevant to this lawsuit, the Defendants, employed and directed physicians, nurses, nurses' aides and other medical personnel who rendered care to Geraldine E. Wiggins.

122. At all times relevant to this lawsuit, Defendants owed a duty to Geraldine E. Wiggins to provide competent and qualified physicians, surgeons, nurses and other quasi-medical personnel to render care to her.

**CI-22-04128**

123. At all times relevant to this lawsuit, the Defendants owed to Geraldine E. Wiggins the duty to operate their facility in a careful and reasonable manner, under the circumstances, as would have been done by other similar facilities in and about the Pennsylvania area.

124. At all times relevant to this lawsuit, the Defendants and their agents, owed Geraldine E. Wiggins the duty to possess and exercise that degree of skill and knowledge ordinarily possessed and exercised by similar facilities, physicians and/or nurses in and about the Pennsylvania area.

125. At all times relevant to this lawsuit, Geraldine E. Wiggins' care was to be delivered and administered by the agents, servants and/or employees of the Defendants at the Defendants' facility in a reasonably safe and prudent manner within the applicable standards of care for the community Commonwealth of Pennsylvania and federal nursing home facility rules and regulations.

126. The Defendants breached their duties and were, therefore, negligent, careless and exhibited a reckless disregard to the health, safety, welfare and well-being of Geraldine E. Wiggins.

127. The aforesaid breaches of duties, negligence, carelessness and recklessness of the Defendants directly and proximately caused the aforesaid injuries to Geraldine E. Wiggins, including, a fall, hematoma to skull, head laceration, C7 and T1 fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

128. In causing the aforesaid injuries, the Defendants knew, or should have known, that



Geraldine E. Wiggins would suffer such harm.

129. The conduct of the Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

130. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demand judgment in their favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**CI-22-04128**

**COUNT III - CORPORATE LIABILITY**  
**BRENDA L. KLING, ADMINISTRATRICES OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**  
**v.**  
**REHABILITATION CENTER AT BRETHREN VILLAGE, LLC, BRETHREN VILLAGE**  
**REALTY, LLC and JOHN DOES 1-4**

---

131. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Complaint as though same were fully set forth at length herein.

132. Defendants' agents, employees, and servants and others provided care and treatment to Geraldine E. Wiggins as agents, employees, servants, officers or directors of Defendants or apparent agents held out as such.

133. At all times relevant hereto, Defendants' agents, servants, employees and others were acting in the scope of their employment as agents, servants, or employees of said Defendants.

134. At all relevant times pertinent hereto, the corporate conduct of the Defendants was independent of the negligent conduct of the employees, and was outrageous, willful, and wanton, and exhibited a reckless indifference to the health, welfare and well-being of Decedent.

135. Defendants, as corporate entities, are liable based on the following duties of care owed to Geraldine E. Wiggins:

- a) a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment;
- b) a duty to select and retain only competent physicians;
- c) a duty to oversee all persons who practice medicine within its walls as to patient care; and,

- d) a duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients.

136. Defendants owed Geraldine E. Wiggins a duty concerning the care and treatment under a corporate negligence standard with regard to the policies, actions and inactions of the institution itself and are directly liable for their own negligence.

137. Defendants and their corporate members, managers, partners, owners, and directors breached their duties and were, therefore, negligent, careless and reckless in their duties and obligation to Geraldine E. Wiggins.

CI-22-04128

138. The aforesaid breaches of duties, corporate negligence, carelessness and recklessness of Defendants directly and proximately caused the aforesaid injuries to Decedent, including but not limited to, experience, a fall, hematoma to skull, head laceration, C7 and T1 fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

139. In causing the aforesaid injuries, Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

140. The conduct of the Defendants was intentional, outrageous, willful and wanton and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

141. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demand judgment in their favor and against all Corporate Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT IV -SURVIVAL CLAIM  
BRENDA L. KLING, ADMINISTRATRICES OF  
THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

v.

**REHABILITATION CENTER AT BRETHREN VILLAGE, LLC, BRETHREN VILLAGE,  
BRETHREN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4**

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142. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Complaint as though same were fully set forth at length herein.

143. Plaintiff, Brenda L. Kling, Administratrix of the Estate of Geraldine E. Wiggins, deceased, also brings this action on behalf of the Estate of Geraldine E. Wiggins, deceased, under and by virtue of the Act of 1972, June 30, P.L. 508, No. 164, Section 2, eff. July 1972, as amended, 20 Pa.C.S.A. 3371, et seq., (known as the Pennsylvania Survival Act”).

144. Plaintiff, Brenda L. Kling, as daughter and Administratrix of the Estate of Geraldine E. Wiggins, deceased, is a survival claim beneficiary.

145. Plaintiff, Brenda L. Kling, as Administratrix of the Estate of Geraldine E. Wiggins, deceased, also claims on behalf of the Estate of Geraldine E. Wiggins, deceased, all damages recoverable under the Pennsylvania Survival Act, including, but not limited to damages for the conscious pain and suffering undergone by Decedent, up to and including the time of her death, which was caused by the Defendants' breach of duties, negligence, carelessness, and recklessness.

146. Plaintiff claim damages for the fright and mental suffering attributable to the peril leading to the physical manifestation of mental and physical injuries experience, a fall, hematoma to skull, head laceration, C7 and T1 fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

147. In causing the aforesaid injuries, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

**CI 22-04128**

148. As a result of the death of Geraldine E. Wiggins, her Estate has been deprived of the economic value of the Decedent's life during the period of her life expectancy and Plaintiff, as Administratrix of the Estate of Geraldine E. Wiggins, deceased, claim damages for pecuniary loss sustained by the Estate as a result of her death, as well as for the conscious pain and suffering undergone by Decedent, up to and including the time of her death.

149. The conduct of the Defendants was intentional, outrageous, willful, wanton and exhibited a reckless indifference to the safety, health, welfare, and well-being of Geraldine E. Wiggins.

**CI-22-04128**

150. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demand judgment in their favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT V - WRONGFUL DEATH CLAIM  
BRENDA L. KLING, ADMINISTRATRICES OF  
THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

**v.**

**REHABILITATION CENTER AT BRETHERN VILLAGE, LLC, BRETHERN VILLAGE,  
BRETHERN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4**

---

151. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Complaint as though same were fully set forth at length herein.

152. Plaintiff also brings this action on behalf of Decedent's estate under and by virtue of the Act of 1855 P.L. 30, as amended, Pa.R.C.P. 2202, as further amended, July 1976, 42Pa.C.S.A. 8301 (known as the "Pennsylvania Wrongful Death Act").

153. Plaintiff, Brenda L. Kling, as daughter and Administratrix of the Estate of Geraldine E. Wiggins, deceased, is a wrongful death beneficiary.

154. Plaintiff claims all damages recoverable under the Pennsylvania Wrongful Death Act, including, but not limited to damages for pecuniary loss suffered by Decedent's survivors by reason of the death of Geraldine E. Wiggins, as well as for the reimbursement for medical expenses, nursing expenses, funeral expenses, expenses of administration and other expenses incurred in connection therewith.



155. As a result of the death of Geraldine E. Wiggins, the aforesaid survivors have been deprived of the comfort, aid, assistance, tutelage, maintenance, and companionship that they would have received from Decedent for the remainder of her natural life.

**WHEREFORE**, Plaintiff demand judgment in their favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT IV- BREACH OF FIDUCIARY DUTY  
BRENDA L. KLING, ADMINISTRATRICES OF  
THE ESTATE OF GERALDINE E. WIGGINS, DECEASED  
v.**

**CI-22-04128**

**REHABILITATION CENTER OF BRETHEN VILLAGE, LLC**

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156. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Complaint as though same were fully set forth at length herein.

157. At all times material and relevant hereto, Geraldine E. Wiggins was incapable of dealing with the facility, Brethren Village, on equal terms, and was incapable of engaging in any arm's length relationship with them.

158. Additionally, at all times material and relevant hereto, Geraldine E. Wiggins was incapable of independently providing for her own safety, health, welfare and well-being and justifiably relied on the facility to provide necessary care and services to attain and/or maintain her highest practicable physical, mental and psychosocial well-being.

159. At all times material and relevant hereto, the facility individually and/or collectively fostered and forged a relationship of special confidence and trust with Geraldine E. Wiggins by admitting her into their care on April 13, 2021, and by reserving the right to specifically determine the level of care, safety, protection, services and supplies that would be provided to Geraldine E. Wiggins.

160. At all times material and relevant hereto, the facility individually and/or collectively controlled and oversaw every single aspect of Geraldine E. Wiggins's existence, including her activities of daily living (ADL), custodial care, as well as skilled nursing and healthcare.

161. At all times material and relevant hereto, the facility individually and/or collectively determined and orchestrated the most trivial as well as the most vital aspects of Geraldine E. Wiggins's

existence, from the type of clothing she wore, to when and how she received healthcare, as well as quality and quantity of food and water she could consume.

162. As a result, Geraldine E. Wiggins was solely and entirely dependent upon the facility's staff, employees, agents, officers and directors, to provide for her basic daily care, skilled nursing and healthcare, services, safety, protection, well-being and personal and intimate needs.

163. Geraldine E. Wiggins reposed a special confidence into the facility's staff, employees, agents, officers and directors to provide her with necessary care and services to attain and/or maintain her highest practicable physical, mental, and psychosocial well-being.

**CI-22-04128**

164. At all times material hereto, the facility developed a special relationship with Geraldine E. Wiggins by virtue of the type of the care and services she required, their supposedly superior knowledge, skill and expertise, and their overmastering dominance over Geraldine E. Wiggins and by virtue of Geraldine E. Wiggins's weakness, dependence and inability to independently provide for her own safety, health, welfare and well-being and her justifiable reliance on the facility to provide for her safety, health, welfare and well-being.

165. In their special relationship with one another, Geraldine E. Wiggins, a vulnerable and dependent individual, did not and could not deal with the facility on equal terms due to the facility's overmastering dominance on one side, and due to Geraldine E. Wiggins's weakness and justifiable trust on another side.

166. At all times material hereto, Geraldine E. Wiggins entrusted her care, treatment, as well as every single aspect of her very existence into the exclusive care, custody and control of the facility and its staff, employees, agents, officers and directors.

167. At all times material hereto, the aforementioned special relationship enabled the facility to occupy a position of confidence regarding Geraldine E. Wiggins requiring fidelity, loyalty and scrupulous fairness and good faith on the part of the facility.

168. The aforementioned special relationship further required the facility to refrain from using its position to Geraldine E. Wiggins's detriment and the facility's own advantage.

169. As such, and at all times material hereto, the facility, Rehabilitation Center at Brethren Village, LLC, was a fiduciary of Geraldine E. Wiggins.

170. At all times material hereto, the facility owed a fiduciary duty to Geraldine E. Wiggins.

171. The facility breached its fiduciary duty and its fiduciary obligations, as well as violated its relationship of trust and special confidence owed to Geraldine E. Wiggins by: a) engaging in the conduct set forth in detail in the within Complaint; and b) allowing revenues, profits and assets obtained from the facility's patients as well as their payor sources for inflated, improper and unreasonable inter-company fees and transfers designed and created for the benefit of the facility's owners, parent companies, affiliates and the Defendants herein, instead of utilizing said resources effectively and efficiently in order to maintain and/or attain the highest practicable physical, mental and psychosocial well-being of the facility's patients, including Geraldine E. Wiggins.

**CI-22-04128**

172. In their dealings with Geraldine E. Wiggins, as described herein, the facility acted in bad faith, and used its position of trust and special confidence to their own advantage and to Geraldine E. Wiggins's detriment.

173. In violating its fiduciary duties and obligations to Geraldine E. Wiggins, the facility knew or should have known, that Geraldine E. Wiggins would suffer harm.

174. The conduct of the facility was intentional, outrageous, willful, wanton and exhibited a reckless indifference to the safety, health, welfare and well-being of Geraldine E. Wiggins.

175. The conduct of the facility was such, that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demand judgment in their favor and against Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT V – CORPORATE DEFENDANTS AIDING and ABETTING BREACH OF  
FIDUCIARY DUTY**

**BRENDA L. KLING, ADMINISTRATRICES OF  
THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

**v.**

**BRETHREN VILLAGE, BRETHREN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA  
and JOHN DOES 1-4**

176. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Complaint as though same were fully set forth at length herein.

177. The Defendants knew, or should have known, of Geraldine E. Wiggins's fiduciary relationship with the facility, Rehabilitation Center at Brethren Village, LLC, by virtue of the type of the care and services she required, the supposedly superior knowledge, skill and expertise, and their overmastering dominance over Geraldine E. Wiggins, and by virtue of Geraldine E. Wiggins' weakness, dependence and inability to independently providing for her own safety, health, welfare and well-being and is justifiable reliance on the facility to provide for her safety, health, welfare and well-being.

CI-22-04128

178. The Defendants knowingly participated in and provided substantial assistance and encouragement to the facility in connection with the facility's breach of their fiduciary duties and obligations to Geraldine E. Wiggins, as set forth in detail in Count IV of this Complaint.

179. The Defendants knew, or should have known, that the facility's patients, including Geraldine E. Wiggins, were incapable of independently providing for their own care, safety and well-being, and were justifiably relying on, and solely depending upon the facility's staff, employees, agents, officers and directors to provide for the basic daily and custodial care, skilled nursing and healthcare services, safety, welfare and well-being.

180. Additionally, the Defendants knowingly assisted, encouraged, aided and abetted the facility in its breach of fiduciary duties and obligations to the facility's patients, including Geraldine E. Wiggins, by: a) engaging in the conduct set forth in detail in this Complaint; b) exercising complete and total control over the facility's revenues by regularly and repeatedly sweeping nearly all of the facility's revenues into corporate account under exclusive control of the Corporate Defendants and/or their designee; c) knowingly and intentionally creating and accepting inter-company fees and transfers consisted of revenues derived from the facility's patients and their payor sources, and designed to improperly and unjustly enrich the Corporate Defendants, instead of allowing the facility to utilize its resources effectively and efficiently to allow the facility's patients, including Geraldine E. Wiggins, to attain and/or maintain their highest practicable physical, mental and psychosocial well-being; d) structuring the managing and operating



business model for the facility in such a way that constrained the facility's ability to provide the adequate and necessary care and services to their patients, including Geraldine E. Wiggins, while simultaneously benefiting and enriching the pyramid structure corporate entities; e) overseeing, managing, and controlling the facility's acceptance of reimbursement from patients, including Geraldine E. Wiggins, knowing that the facility could not provide full value of the care and services to meet the care and safety needs of their patients, including Geraldine E. Wiggins; f) drafting, structuring and approving contracts between the facility and Defendants, which the Defendants knew, or should have known, would result in diversion and depleting of the facility revenues, necessary to provide the care and services to and meet the needs of their residents, including Geraldine E. Wiggins.

**CI-22-04128**

181. The aforementioned conduct of the Defendants constitutes knowing and intentional aiding and abetting the facility's breach of their fiduciary duties and obligations to the facility patients, including Geraldine E. Wiggins, and subjects the Defendants to liability for the injuries and harm suffered by Geraldine E. Wiggins, as aforesaid.

182. In adding and abetting the facility in their breach of fiduciary duties and obligations to Geraldine E. Wiggins, as aforesaid, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer harm.

183. As a result of the Defendants' aiding and abetting the facility's breach of their fiduciary duties and obligations to the facility residents, including Geraldine E. Wiggins, the Defendants were improperly and unjustly enriched, their facility, Rehabilitation Center at Brethren Village, LLC, was left with inadequate staff and resources to provide for the care and meet the needs of the facility's patients, including Geraldine E. Wiggins, and Geraldine E. Wiggins suffered foreseeable and avoidable injuries set forth herein, and more specifically, experience, a fall, hematoma to skull, head laceration, C7 and T1 fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

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PROTHONOTARY'S OFFICE  
LANCASTER, PA

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Jul 11 2022 12:21PM

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184. The conduct of the Defendants was intentional, outrageous, willful, wanton and exhibited a reckless indifference to the safety, health, welfare and well-being of Geraldine E. Wiggins.

185. The conduct of the Defendants was such, that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demands judgment in her favor and against Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

ROSENBAUM & ASSOCIATES, P.C. **CI-22-04128**

Dated: 6/27/2022

BY: /s/ Andrei Govorov  
Andrei Govorov, Esquire  
Counsel for Plaintiff

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LANCASTER, PA

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Ricci M. Dehl

VERIFICATION

I verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

Brenda L. Kling

**CI-22-04128**

Brenda L. Kling, Administratrix of the  
the Estate of Geraldine E. Wiggins, Deceased

Dated: 6-29-22

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CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Case Records Public Access Policy of the Unified Judicial System of Pennsylvania* that require filing confidential information and documents differently than non-confidential information and documents.

**CI-22-04128**

Submitted by: Rosenbaum & Associates, PC

Signature: /s/ Andrei Govorov

Name: Andrei Govorov, Esquire

Attorney No. (if applicable): 209365



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LANCASTER, PA

# Supreme Court of Pennsylvania

## Court of Common Pleas Civil Cover Sheet

Lancaster

County

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Jul 11 2022 12:21PM  
Ricci M. Dehl

Docket No:

The information collected on this form is used solely for court administration purposes. This form does not supplement or replace the filing and service of pleadings or other papers as required by law or rules of court.

### Commencement of Action:

- ☒ Complaint ☐ Writ of Summons ☐ Petition  
☐ Transfer from Another Jurisdiction ☐ Declaration of Taking

Lead Plaintiff's Name:

Brenda L. Kling, Adm. of Estate of Geraldine E. Wiggins, i

Lead Defendant's Name:

Rehabilitation Center at Brethren Village, LLC

CT-22-04128

Are money damages requested? ☒ Yes ☐ No

Dollar Amount Requested:  
(check one)

- ☐ within arbitration limits  
☒ outside arbitration limits

Is this a *Class Action Suit*? ☐ Yes ☒ No

Is this an *MDJ Appeal*? ☐ Yes ☒ No

Name of Plaintiff/Appellant's Attorney: Andrei Govorov, Esquire

☐ Check here if you have no attorney (are a Self-Represented [Pro Se] Litigant)

**Nature of the Case:** Place an "X" to the left of the **ONE** case category that most accurately describes your **PRIMARY CASE**. If you are making more than one type of claim, check the one that you consider most important.

### TORT (do not include Mass Tort)

- ☐ Intentional  
☐ Malicious Prosecution  
☐ Motor Vehicle  
☐ Nuisance  
☐ Premises Liability  
☐ Product Liability (does not include mass tort)  
☐ Slander/Libel/ Defamation  
☐ Other:  
\_\_\_\_\_

### CONTRACT (do not include Judgments)

- ☐ Buyer Plaintiff  
☐ Debt Collection: Credit Card  
☐ Debt Collection: Other  
\_\_\_\_\_  
☐ Employment Dispute:  
Discrimination  
☐ Employment Dispute: Other  
\_\_\_\_\_  
☐ Other:  
\_\_\_\_\_

### CIVIL APPEALS

- Administrative Agencies  
☐ Board of Assessment  
☐ Board of Elections  
☐ Dept. of Transportation  
☐ Statutory Appeal: Other  
\_\_\_\_\_  
\_\_\_\_\_

- ☐ Zoning Board  
☐ Other:  
\_\_\_\_\_  
\_\_\_\_\_

### MASS TORT

- ☐ Asbestos  
☐ Tobacco  
☐ Toxic Tort - DES  
☐ Toxic Tort - Implant  
☐ Toxic Waste  
☐ Other:  
\_\_\_\_\_  
\_\_\_\_\_

### REAL PROPERTY

- ☐ Ejectment  
☐ Eminent Domain/Condemnation  
☐ Ground Rent  
☐ Landlord/Tenant Dispute  
☐ Mortgage Foreclosure: Residential  
☐ Mortgage Foreclosure: Commercial  
☐ Partition  
☐ Quiet Title  
☐ Other:  
\_\_\_\_\_  
\_\_\_\_\_

### MISCELLANEOUS

- ☐ Common Law/Statutory Arbitration  
☐ Declaratory Judgment  
☐ Mandamus  
☐ Non-Domestic Relations  
Restraining Order  
☐ Quo Warranto  
☐ Replevin  
☐ Other:  
\_\_\_\_\_  
\_\_\_\_\_

### PROFESSIONAL LIABILITY

- ☐ Dental  
☐ Legal  
☐ Medical  
☒ Other Professional:  
\_\_\_\_\_

Nursing Home Negligence

# EXHIBIT 6

Page 1

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA

-----X  
LANDMARK AMERICAN INSURANCE COMPANY,

Plaintiff,

-against- Civil Action No.:  
5:24-cv-01412-JMG

NURSELECT LLC,

Defendant.

-----X

DATE: November 20, 2024

TIME: 9:06 a.m.

VIDEOCONFERENCE DEPOSITION of  
the Defendant, NURSELECT LLC, by a witness,  
DAVID SHELLY, taken by the respective  
parties, held via Zoom, before Nicole  
Veltri, RPR, CRR, a Notary Public of the  
State of New York.

Job No. CS7022807

<p style="text-align: right;">Page 2</p> <p>1 2 A P P E A R A N C E S: 3 4 KAUFMAN, BORGEEST &amp; RYAN, LLP Attorneys for the Plaintiff 5 200 Summit Lake Drive, 1st Floor Valhalla, New York 10595 6 BY: SARAH MORIARTY, ESQ. JOAN GILBRIDE, ESQ. 7 8 9 DICKIE McCAMEY &amp; CHILCOTE PC Attorneys for the Defendant 2578 Interstate Drive, Suite 105 10 Harrisburg, Pennsylvania 17110 BY: BRYON KASTER, ESQ. 11 12 13 * * * 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 D. SHELLY 2 estate of Geraldine E. Wiggins versus 3 Rehabilitation Center at Brethren Village, 4 et al, versus NurSelect LLC. 5 And so when I refer to the word 6 underlying action, I'm referring to that 7 entire action; and when I refer to the term 8 joinder, I'm referring to a NurSelect was 9 named as a third-party defendant in this 10 action by -- in that action by Brethren 11 Village. 12 Do you understand? 13 A. I do. 14 Q. All right. Is that okay? If 15 you have questions about what I'm referring 16 to, feel free to ask along the way. 17 A. Sure. 18 Q. All right. And then I'll go 19 ahead and mark the Complaints in that 20 underlying action, which as I sent to 21 Mr. Kaster yesterday, includes the Fourth 22 Amended Complaint as well as the Joinder 23 Complaint collectively. And that will be 24 marked as Exhibit 1. 25 (Whereupon, Plaintiff's Exhibit</p>
<p style="text-align: right;">Page 3</p> <p>1 D. SHELLY 2 D A V I D S H E L L Y, called as a 3 witness, having been first duly sworn by a 4 Notary Public of the State of New York, was 5 examined and testified as follows: 6 EXAMINATION BY 7 MS. MORIARTY: 8 Q. Please state your name for the 9 record. 10 A. David Shelly. 11 Q. What is your address? 12 A. 815 Sycamore Road in Mohnton, 13 M-O-H-N-T-O-N, Pennsylvania 19540. 14 Q. Good morning, Mr. Shelly. Good 15 morning, Mr. Kaster. 16 A. Good morning. 17 Q. As you probably know, myself 18 and Ms. Gilbride are here as counsel for 19 Landmark American Insurance Company. I'll 20 refer to them as Landmark, and we're here 21 today asking questions about an insurance 22 claim made by NurSelect in connection with 23 an underlying lawsuit; and that lawsuit, 24 for the record, is Brenda L. Quinn, 25 individually, and as administratrix of the</p>	<p style="text-align: right;">Page 5</p> <p>1 D. SHELLY 2 1 Fourth Amended Complaint and 3 Joinder Complaint were marked for 4 identification as of this date.) 5 Q. All right. And now, 6 Mr. Shelly, have you been deposed before? 7 A. No. 8 Q. All right. So I'll go over 9 some basic, just some basic housekeeping 10 and just ground rules before we get started 11 today. 12 First, have you taken any 13 medication that can alter your ability to 14 answer my questions today? 15 A. No. 16 Q. All right. And so especially 17 because we're virtual today, it's important 18 that you give verbal answers. Try to 19 refrain from doing, like, head nods and 20 things like that so that the court reporter 21 can hear you and transcribe accurately. I 22 know it's easy to forget; but I might just 23 remind you, you know, say yes or no, not 24 head nod. 25 A. Sure.</p>

2 (Pages 2 - 5)



<p style="text-align: right;">Page 6</p> <p>1 D. SHELLY</p> <p>2 Q. Let me know if you don't</p> <p>3 understand any question. I'll do my best</p> <p>4 to rephrase it. Sometimes I can talk fast.</p> <p>5 If you need me to slow down, let me know.</p> <p>6 You can't hear or anything like that, just</p> <p>7 let me know.</p> <p>8 On that same line, if you need</p> <p>9 a break, feel free to ask for one. I only</p> <p>10 ask that if there's a question pending,</p> <p>11 that you finish answering it before we take</p> <p>12 a break.</p> <p>13 All right. And now because we</p> <p>14 are virtual today, which we, the parties,</p> <p>15 previously agreed to over email, we will be</p> <p>16 using the share screen function on Zoom to</p> <p>17 show you documents; and so you have the</p> <p>18 ability to look at those documents on your</p> <p>19 screen. You can -- if you want to look at</p> <p>20 a particular part of the document or a</p> <p>21 particular document to help you, you know,</p> <p>22 refresh your recollection, feel free to ask</p> <p>23 and I'll share that document, zoom into</p> <p>24 different portions. So just feel free to</p> <p>25 speak up and ask if you need that or if you</p>	<p style="text-align: right;">Page 8</p> <p>1 D. SHELLY</p> <p>2 deposition to prepare?</p> <p>3 A. No.</p> <p>4 Q. All right. And do you have any</p> <p>5 documents in front of you today?</p> <p>6 A. Actually, let me amend that</p> <p>7 last -- my wife is also part of the</p> <p>8 company. We talked about it briefly. I</p> <p>9 don't know if that matters.</p> <p>10 Q. Sure. What is your wife's role</p> <p>11 in the company?</p> <p>12 A. She works in the human</p> <p>13 resources. She helps credential our</p> <p>14 nurses.</p> <p>15 Q. Sorry, I didn't catch that.</p> <p>16 Could you just repeat?</p> <p>17 A. She helps credential our</p> <p>18 nurses.</p> <p>19 Q. Oh, okay. Got it. All right.</p> <p>20 And so do you have any</p> <p>21 documents with you or in front of you</p> <p>22 today?</p> <p>23 A. I don't. They're on my</p> <p>24 computer.</p> <p>25 Q. All right. Okay.</p>
<p style="text-align: right;">Page 7</p> <p>1 D. SHELLY</p> <p>2 want that.</p> <p>3 A. Sure.</p> <p>4 Q. All right. So we'll just get</p> <p>5 into it now.</p> <p>6 What did you do to prepare for</p> <p>7 today's deposition?</p> <p>8 A. Not much. I reviewed some of</p> <p>9 the emails that were sent from Attorney</p> <p>10 Kaster.</p> <p>11 Q. All right. And did you speak</p> <p>12 with anyone to prepare for today's</p> <p>13 deposition?</p> <p>14 A. No.</p> <p>15 MR. KASTER: Just to clarify,</p> <p>16 other than me as his attorney?</p> <p>17 MS. MORIARTY: Sure. Well,</p> <p>18 yes.</p> <p>19 Q. Did you speak with your</p> <p>20 attorney in preparation for today's</p> <p>21 deposition?</p> <p>22 MR. KASTER: I'm going to --</p> <p>23 A. Yeah. We met last week.</p> <p>24 Q. All right. Did you speak with</p> <p>25 any employees of NurSelect ahead of today's</p>	<p style="text-align: right;">Page 9</p> <p>1 D. SHELLY</p> <p>2 And so are you currently</p> <p>3 employed?</p> <p>4 A. Yes.</p> <p>5 Q. And is that at NurSelect?</p> <p>6 A. Yes.</p> <p>7 Q. You're still the president of</p> <p>8 NurSelect, right?</p> <p>9 A. Yes.</p> <p>10 Q. All right. When did you first</p> <p>11 start working there?</p> <p>12 A. I started the company in May of</p> <p>13 2020.</p> <p>14 Q. Oh, so you founded the company?</p> <p>15 A. Yes.</p> <p>16 Q. Can you briefly describe what</p> <p>17 NurSelect is, what they do?</p> <p>18 A. We hire CNAs, LPNs, and RNs and</p> <p>19 contract with nursing homes; and they</p> <p>20 request a nurse from us, and we send a</p> <p>21 nurse to them to help with whatever they</p> <p>22 need.</p> <p>23 Q. All right. Can you briefly</p> <p>24 describe your responsibilities as the</p> <p>25 president of NurSelect?</p>

3 (Pages 6 - 9)

<p style="text-align: right;">Page 10</p> <p>1 D. SHELLY</p> <p>2 A. Oh, I run the company, all</p> <p>3 aspects of the company.</p> <p>4 MS. GILBRIDE: It's a little</p> <p>5 hard to hear.</p> <p>6 MS. MORIARTY: Yes.</p> <p>7 Mr. Shelly, I might just ask you to</p> <p>8 speak up because I'm getting a little</p> <p>9 bit of feedback.</p> <p>10 THE WITNESS: Sure.</p> <p>11 Q. Okay. So can you just describe</p> <p>12 a typical day as president of NurSelect,</p> <p>13 what your duties entail?</p> <p>14 A. Sure. We -- well, I help with</p> <p>15 hiring. I help with marketing. I help</p> <p>16 with recruiting. I help with billing and</p> <p>17 payroll. I help with scheduling.</p> <p>18 Q. All right.</p> <p>19 A. I take calls. That's about it.</p> <p>20 Q. All right. So -- obviously</p> <p>21 this case is regarding an insurance claim.</p> <p>22 Can you describe how insurance</p> <p>23 claims are typically handled at NurSelect?</p> <p>24 A. We work through a broker,</p> <p>25 Liberty, in Pittsburgh, Pennsylvania; so</p>	<p style="text-align: right;">Page 12</p> <p>1 D. SHELLY</p> <p>2 Q. Okay.</p> <p>3 A. Yeah. I mean, we were served</p> <p>4 with the Complaint at a different office,</p> <p>5 and then I guess Bryon had mentioned that</p> <p>6 Landmark had filed a suit against us so --</p> <p>7 Q. Can you just elaborate on what</p> <p>8 you mean by different office? Where was</p> <p>9 the Complaint served?</p> <p>10 A. The Complaint was served to our</p> <p>11 Lancaster office.</p> <p>12 Q. And just to clarify, by</p> <p>13 Complaint, are you referring to the</p> <p>14 underlying action, the Wiggins versus</p> <p>15 Brethren Village versus NurSelect?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. So that was at your</p> <p>18 Lancaster office, right?</p> <p>19 A. Yes.</p> <p>20 Q. And when was NurSelect served</p> <p>21 with that?</p> <p>22 A. On September 12th, 2023.</p> <p>23 Q. Okay. And that's the only</p> <p>24 lawsuit that NurSelect has been named as a</p> <p>25 party in?</p>
<p style="text-align: right;">Page 11</p> <p>1 D. SHELLY</p> <p>2 basically, I talk with two gentlemen there.</p> <p>3 I speak with Jason and Steve, and they</p> <p>4 pretty much take care of everything for me.</p> <p>5 Q. What was your broker for the</p> <p>6 claim at issue here?</p> <p>7 A. The same, Liberty.</p> <p>8 Q. Liberty, okay.</p> <p>9 A. Yes.</p> <p>10 Q. How are notices of lawsuits</p> <p>11 typically handled at NurSelect?</p> <p>12 A. I had one experience. We had a</p> <p>13 Complaint dropped off at a different office</p> <p>14 from where I work.</p> <p>15 Q. I'm so sorry. I didn't catch</p> <p>16 that. Can I just ask you --</p> <p>17 A. Maybe repeat the question. I'm</p> <p>18 not sure.</p> <p>19 Q. Sure. Sorry. There's some lag</p> <p>20 on my computer. That's why.</p> <p>21 Okay. How are notices of</p> <p>22 lawsuits typically handled by NurSelect?</p> <p>23 A. I said I've had one experience</p> <p>24 with this, and this is this particular</p> <p>25 lawsuit.</p>	<p style="text-align: right;">Page 13</p> <p>1 D. SHELLY</p> <p>2 A. Other than the Landmark</p> <p>3 lawsuit, yes.</p> <p>4 Q. Oh, of course. Other than the</p> <p>5 lawsuit we're here for today?</p> <p>6 A. Mm-hmm.</p> <p>7 Q. Where did you work prior to</p> <p>8 founding NurSelect?</p> <p>9 A. I had a company called</p> <p>10 Pro-Stat. We were a home care agency.</p> <p>11 Q. And what was your role at that</p> <p>12 agency?</p> <p>13 A. Owner and chief operating</p> <p>14 officer.</p> <p>15 Q. And did you have any experience</p> <p>16 with lawsuits at that agency?</p> <p>17 A. Yeah. We had one lawsuit with</p> <p>18 that company.</p> <p>19 Q. And that was one lawsuit where</p> <p>20 the agency was named as a party and served?</p> <p>21 A. Yes.</p> <p>22 Q. All right. So you mentioned</p> <p>23 that NurSelect was served at the Lancaster</p> <p>24 office.</p> <p>25 Could you provide the address</p>

<p style="text-align: right;">Page 14</p> <p>1 D. SHELLY</p> <p>2 of that office?</p> <p>3 A. Yes. It's 255 Butler Avenue,</p> <p>4 Suite 202, 202 or 201 -- 202, Lancaster</p> <p>5 17601.</p> <p>6 Q. All right. And how many</p> <p>7 offices does NurSelect have?</p> <p>8 A. Two.</p> <p>9 Q. Okay. Just the two.</p> <p>10 A. Yes.</p> <p>11 Q. And where is the other office?</p> <p>12 A. It's in Reading; and the</p> <p>13 address is 1829 New Holland Avenue,</p> <p>14 Suite 13, Reading 19607.</p> <p>15 Q. All right. Has NurSelect ever</p> <p>16 had any other offices or other addresses?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. I might ask more on that</p> <p>19 later, but just to keep things moving</p> <p>20 because, you know, I don't want to keep you</p> <p>21 here all day if we don't have to. We'll</p> <p>22 try to get this done. All right.</p> <p>23 So going back to the underlying</p> <p>24 action. You mentioned being served. When</p> <p>25 did you first become aware of the</p>	<p style="text-align: right;">Page 16</p> <p>1 D. SHELLY</p> <p>2 A. That was October 10th, 2022, --</p> <p>3 or October 19th, 2022.</p> <p>4 Q. Okay. And as you mentioned,</p> <p>5 your wife runs HR; is that right?</p> <p>6 A. Mm-hmm -- yes.</p> <p>7 Q. Okay. And I think you said the</p> <p>8 name Lori Schoener?</p> <p>9 A. Correct.</p> <p>10 Q. Who's Lori Schoener?</p> <p>11 A. She's the nursing home</p> <p>12 administrator for Brethren Village.</p> <p>13 Q. Okay. And so Lori Schoener</p> <p>14 reached out directly to NurSelect HR to ask</p> <p>15 for information about Ayanna?</p> <p>16 A. No. No. There was just an</p> <p>17 email outgoing from Marissa's account to</p> <p>18 Lori Schoener informing her that an</p> <p>19 attorney reached out for a copy of Ayanna's</p> <p>20 statement, and Marissa wanted to make sure</p> <p>21 it was okay that we sent that statement to</p> <p>22 this lawyer.</p> <p>23 Q. Okay. And is Marissa your</p> <p>24 wife?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 15</p> <p>1 D. SHELLY</p> <p>2 underlying action?</p> <p>3 A. On September 12th, 2023.</p> <p>4 Q. And just to clarify, were you</p> <p>5 aware of the underlying action before</p> <p>6 NurSelect was named?</p> <p>7 A. No.</p> <p>8 Q. All right. Did anyone from the</p> <p>9 estate of Geraldine Wiggins including</p> <p>10 attorneys for that estate ever reach out to</p> <p>11 you?</p> <p>12 A. At one point before we were</p> <p>13 named, yes.</p> <p>14 Q. Okay. Can you -- well, when</p> <p>15 was that?</p> <p>16 A. That was -- oh, boy. Maybe</p> <p>17 Octoberish. Was that October 19th? So on</p> <p>18 October 19th, Marissa, my wife, had sent an</p> <p>19 email to Lori Schoener, the nursing home</p> <p>20 administrator for Brethren Village</p> <p>21 informing her that an attorney reached out</p> <p>22 asking for a copy of Ayanna's statement,</p> <p>23 the CNA, who was involved in that, the</p> <p>24 incident. A-Y-A-N-N-A.</p> <p>25 Q. And what year was that?</p>	<p style="text-align: right;">Page 17</p> <p>1 D. SHELLY</p> <p>2 Q. Okay. What's her last name?</p> <p>3 A. Shelly, S-H-E-L-L-Y.</p> <p>4 Q. Got it. And was that</p> <p>5 statement, in fact, sent?</p> <p>6 A. Yes.</p> <p>7 Q. Who was the statement sent to?</p> <p>8 A. To Saxton Stump. That was</p> <p>9 Kimberly at Saxton Stump.</p> <p>10 Q. All right. So who do you</p> <p>11 understand that Saxton Stump is?</p> <p>12 A. At the time just an attorney</p> <p>13 that was working with Brethren Village.</p> <p>14 Q. Okay. So you understood that</p> <p>15 Kimberly from Saxton Stump was representing</p> <p>16 Brethren Village?</p> <p>17 A. Yes.</p> <p>18 Q. Did you know why Brethren</p> <p>19 Village had an attorney at that time?</p> <p>20 A. No, I didn't. I mean, I just</p> <p>21 assumed that may be they were being</p> <p>22 investigated or whatever. Maybe they</p> <p>23 wanted a copy. I'm not sure.</p> <p>24 Q. Okay. Were you aware at that</p> <p>25 point of the underlying lawsuit?</p>

5 (Pages 14 - 17)

<p style="text-align: right;">Page 18</p> <p>1 D. SHELLY</p> <p>2 A. No.</p> <p>3 Q. The Wiggins' action.</p> <p>4 A. No.</p> <p>5 Q. Okay. Were you aware at that</p> <p>6 point of the -- actually, let me backtrack</p> <p>7 just a bit here. Excuse me.</p> <p>8 All right. Were you aware of</p> <p>9 the allegation in the underlying action?</p> <p>10 And I'll -- you know what, I'll pull up a</p> <p>11 visual for this. I'm pulling up what we</p> <p>12 marked as Exhibit 1. Sorry. I'm just</p> <p>13 pulling up, and then I'll share my screen.</p> <p>14 Zoom in. So bear with me when I click</p> <p>15 share, here we go. Share.</p> <p>16 All right. Does everybody see</p> <p>17 the screen I have up?</p> <p>18 A. Yes.</p> <p>19 Q. All right. Okay. So this is</p> <p>20 Exhibit 1 and now I'm scrolling to PDF</p> <p>21 page 25 of Exhibit 1. And I'll direct your</p> <p>22 attention to paragraph number 53, which</p> <p>23 says May 12, 2021, progress note documented</p> <p>24 the following, and then I'll go down a few</p> <p>25 sentences. Patient had been standing at</p>	<p style="text-align: right;">Page 20</p> <p>1 D. SHELLY</p> <p>2 Q. Okay.</p> <p>3 A. We weren't notified by the</p> <p>4 client of any of this.</p> <p>5 Q. Were you aware that Ms. Wiggins</p> <p>6 had been injured?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. So I'm going to go back.</p> <p>9 I'm going to go back to May 12th, 2021.</p> <p>10 Was NurSelect notified of the</p> <p>11 injury when it happened?</p> <p>12 A. I'm not -- I received -- no.</p> <p>13 By the employee, most likely I received an</p> <p>14 email on the same day from a staffing</p> <p>15 manager that we had with Ayanna's statement</p> <p>16 attached.</p> <p>17 Q. Okay. Who is that staffing</p> <p>18 manager?</p> <p>19 A. Her name is Missy Reilly,</p> <p>20 R-E-I-L-L-Y.</p> <p>21 Q. Did NurSelect ask for that</p> <p>22 statement?</p> <p>23 A. I don't know. I don't know the</p> <p>24 answer to that. Missy is no longer with</p> <p>25 the company.</p>
<p style="text-align: right;">Page 19</p> <p>1 D. SHELLY</p> <p>2 the sink brushing her teeth when the CNA</p> <p>3 left her in the bathroom to take care of</p> <p>4 another patient who was having blood sugar</p> <p>5 issues. Patient attempted to walk to the</p> <p>6 recliner to sit down, lost her balance</p> <p>7 rolling backwards, hit her head on the base</p> <p>8 of the bedside table.</p> <p>9 And then I'll just scroll. I'm</p> <p>10 going to scroll back up to PDF page five,</p> <p>11 which is the Joinder Complaint and then</p> <p>12 Paragraph 10 right at the top. Ms. Wiggins</p> <p>13 was in the care of Ayanna McDowell, CNA, at</p> <p>14 the time of her fall.</p> <p>15 And so my question is,</p> <p>16 Mr. Shelly, were you aware of those</p> <p>17 allegations at the time that Brethren</p> <p>18 Village attorneys reached out for the</p> <p>19 statement?</p> <p>20 A. At that point, we just had the</p> <p>21 statement from the employee.</p> <p>22 Q. Sorry. Did you hear me,</p> <p>23 Mr. Shelly?</p> <p>24 A. Yes. At that point we just had</p> <p>25 the statement from the employee.</p>	<p style="text-align: right;">Page 21</p> <p>1 D. SHELLY</p> <p>2 Q. Where does Missy work now? Do</p> <p>3 you know?</p> <p>4 A. I don't know. No.</p> <p>5 Q. Can you just clarify for us</p> <p>6 what was Missy's role at NurSelect or</p> <p>7 title?</p> <p>8 A. She was a staffing coordinator.</p> <p>9 She staffed the nurses.</p> <p>10 Q. I understand. So you received</p> <p>11 that email with the statement on May 12,</p> <p>12 2021.</p> <p>13 Did I understand?</p> <p>14 A. Correct. That's correct.</p> <p>15 Q. What did you do upon receiving</p> <p>16 that statement over email?</p> <p>17 A. At that point just read it and</p> <p>18 asked if -- I don't know what I would have</p> <p>19 said. I kept the statement. We put it in</p> <p>20 our file.</p> <p>21 Q. Put that in Ayanna's file?</p> <p>22 A. Yes.</p> <p>23 Q. Did anybody else reach out to</p> <p>24 you in 2021 regarding that injury?</p> <p>25 A. Not to me.</p>

6 (Pages 18 - 21)



<p style="text-align: right;">Page 22</p> <p>1 D. SHELLY</p> <p>2 Q. Did anyone reach out to anyone</p> <p>3 else at NurSelect in 2021 about that</p> <p>4 injury?</p> <p>5 A. Not that I'm aware of.</p> <p>6 Q. Sure. So at the time, where</p> <p>7 was Missy staffed, what location?</p> <p>8 A. She was in our Hershey office</p> <p>9 at that time, or she's still at home. It's</p> <p>10 right around the time we opened another</p> <p>11 office. Either she was working from home,</p> <p>12 or she was at an office in Hershey.</p> <p>13 Q. I understand. And was she</p> <p>14 direct contact with Brethren Village?</p> <p>15 A. She does have direct contact.</p> <p>16 She did have direct contact with Brethren</p> <p>17 Village.</p> <p>18 Q. Okay. Was she charged with</p> <p>19 staffing the nurses at Brethren Village?</p> <p>20 A. That's correct.</p> <p>21 Q. Do you know who at Brethren</p> <p>22 Village that she was in contact with?</p> <p>23 A. Yes.</p> <p>24 Q. Who is that?</p> <p>25 A. Her name is Jenny. I don't</p>	<p style="text-align: right;">Page 24</p> <p>1 D. SHELLY</p> <p>2 involvement with the Wiggins' injury?</p> <p>3 A. No.</p> <p>4 Q. Did you forward the statement</p> <p>5 to anyone at that time?</p> <p>6 A. No. Not that I have any emails</p> <p>7 for.</p> <p>8 Q. Sure. And are you aware if HR</p> <p>9 or anyone else at NurSelect forwarded the</p> <p>10 email to anyone?</p> <p>11 A. No. Just October 19th I think</p> <p>12 was when he forwarded it to the attorney.</p> <p>13 Q. All right. So you know what,</p> <p>14 so we'll move on then to October -- to the</p> <p>15 October forwards that you are referring to.</p> <p>16 Okay. So I'm just going to -- I'm going to</p> <p>17 pull up another document and share my</p> <p>18 screen again. Okay.</p> <p>19 So right now I'm pulling up</p> <p>20 emails; and, Mr. Kaster, just so you're</p> <p>21 aware and for the record, I'm pulling these</p> <p>22 from the same folder that I sent to you</p> <p>23 yesterday.</p> <p>24 A. Understood.</p> <p>25 Q. And this is the same email that</p>
<p style="text-align: right;">Page 23</p> <p>1 D. SHELLY</p> <p>2 know of her -- Wills or Wells. Maybe</p> <p>3 Wills.</p> <p>4 Q. And what was Ms. Wills' role,</p> <p>5 if you know?</p> <p>6 A. I think she was just a staffing</p> <p>7 coordinator there.</p> <p>8 Q. Got it. Okay.</p> <p>9 And was there anyone else from</p> <p>10 NurSelect staffed at Brethren Village at</p> <p>11 that time?</p> <p>12 A. Yes.</p> <p>13 Q. Approximately how many nurses</p> <p>14 or medical staff?</p> <p>15 A. I don't know. I'm not sure.</p> <p>16 More than Ayanna.</p> <p>17 Q. Was it more than five?</p> <p>18 A. I don't know.</p> <p>19 Q. Okay.</p> <p>20 A. I can find out. I can pull</p> <p>21 that information up.</p> <p>22 Q. All right. We can move on for</p> <p>23 now.</p> <p>24 Did NurSelect take any other</p> <p>25 actions to investigate Ms. McDowell's</p>	<p style="text-align: right;">Page 25</p> <p>1 D. SHELLY</p> <p>2 was produced by NurSelect in this case. So</p> <p>3 I will mark these as Exhibit 2. As you can</p> <p>4 see here, we have a scan of an email,</p> <p>5 subject line: Re: Ayanna McDowell, David</p> <p>6 Shelly, and then the other address is</p> <p>7 KAS@SaxtonStump.Com.</p> <p>8 Mr. Shelly, do you recognize</p> <p>9 this email?</p> <p>10 A. It's an email that I would have</p> <p>11 written, yes.</p> <p>12 Q. All right. And then I'll</p> <p>13 scroll down. We have another email in the</p> <p>14 same -- other emails in the same chain it</p> <p>15 looks like dated October 14, 2022,</p> <p>16 October 20, 2022, and then scrolling</p> <p>17 farther to PDF page three, we have an email</p> <p>18 from Ayanna McDowell to Melissa Reilly</p> <p>19 dated May 12th of 2021.</p> <p>20 A. Okay.</p> <p>21 Q. And so on this May 12, 2021,</p> <p>22 email, is this the statement that you've</p> <p>23 been referring to?</p> <p>24 A. Yes.</p> <p>25 Q. By Ayanna?</p>

7 (Pages 22 - 25)

<p style="text-align: right;">Page 26</p> <p>1 D. SHELLY</p> <p>2 A. Yes.</p> <p>3 Q. And this is the only statement,</p> <p>4 only copy of it?</p> <p>5 A. Yes. Well, that's the email</p> <p>6 that she sent. That's the only copy I</p> <p>7 have.</p> <p>8 Q. Understood. All right. So</p> <p>9 these are all collectively Exhibit 2.</p> <p>10 (Whereupon, Plaintiff's Exhibit</p> <p>11 2 emails produced by NurSelect was</p> <p>12 marked for identification as of this</p> <p>13 date.)</p> <p>14 Q. All right. Let's get some more</p> <p>15 detail on Ayanna.</p> <p>16 What was Ayanna McDowell's</p> <p>17 title or role?</p> <p>18 A. She was certified nursing</p> <p>19 assistant.</p> <p>20 Q. And when did she start working</p> <p>21 at NurSelect or with NurSelect?</p> <p>22 A. I don't have the date on hand.</p> <p>23 Q. Oh, that's okay.</p> <p>24 Was she assigned by NurSelect</p> <p>25 to Brethren Village on May 12th of 2021?</p>	<p style="text-align: right;">Page 28</p> <p>1 D. SHELLY</p> <p>2 so it would have been either on or before</p> <p>3 the 19th of October.</p> <p>4 Q. Understood.</p> <p>5 A. 2022.</p> <p>6 Q. Do you know if Marissa and Lori</p> <p>7 exchanged any emails regarding Ms. Wiggins</p> <p>8 or the underlying action?</p> <p>9 A. Not that I'm aware of.</p> <p>10 Q. Did NurSelect perform any</p> <p>11 searches for those emails?</p> <p>12 A. Yes.</p> <p>13 Q. And you found nothing or</p> <p>14 NurSelect found nothing?</p> <p>15 A. Not that I'm -- yeah. I mean,</p> <p>16 this one slipped by me, the 14th of October</p> <p>17 email; but whatever -- I mean, whatever</p> <p>18 emails we had were given to -- published</p> <p>19 for you guys.</p> <p>20 Q. Do you know why Ms. Selemba was</p> <p>21 asking for the McDowell statement?</p> <p>22 A. I didn't.</p> <p>23 Q. Did you ask Ms. Selemba why she</p> <p>24 needed it?</p> <p>25 A. I didn't.</p>
<p style="text-align: right;">Page 27</p> <p>1 D. SHELLY</p> <p>2 A. Yes. Yes, she was.</p> <p>3 Q. And did you read this statement</p> <p>4 on -- of 2021?</p> <p>5 A. Yes.</p> <p>6 Q. So I'll scroll up. Okay. So</p> <p>7 scrolling up, PDF page two, we have the</p> <p>8 email to you from Kimberly A. Selemba.</p> <p>9 Is that the Kimberly from</p> <p>10 Saxton Stump who you were referring to</p> <p>11 before?</p> <p>12 A. Yes.</p> <p>13 Q. Did you speak with Kimberly</p> <p>14 Selemba prior to sending this email?</p> <p>15 A. I don't recall talking to her.</p> <p>16 Q. Do you know if anyone else at</p> <p>17 NurSelect talked to her or anyone else at</p> <p>18 Saxton Stump prior to this email?</p> <p>19 A. As far as I know, only Marissa</p> <p>20 spoke with Kimberly on the phone.</p> <p>21 Q. Do you know when that</p> <p>22 conversation occurred?</p> <p>23 A. I mean, I have jotted down</p> <p>24 10/19 is when Marissa reached out to Lori.</p> <p>25 I obviously forgot about this other email,</p>	<p style="text-align: right;">Page 29</p> <p>1 D. SHELLY</p> <p>2 Q. And did Ms. Selemba tell you</p> <p>3 that there was an ongoing lawsuit?</p> <p>4 A. She didn't.</p> <p>5 Q. Did you ask Marissa about the</p> <p>6 context of any of her conversations with</p> <p>7 Selemba or with Lori Schoener?</p> <p>8 A. I mean, I would have been in</p> <p>9 the room with her at the time. I did not</p> <p>10 ask her about it though.</p> <p>11 Q. Okay. Do you recall those</p> <p>12 conversations if you heard them?</p> <p>13 A. No, I don't.</p> <p>14 Q. How often -- let me rephrase</p> <p>15 that.</p> <p>16 How often does NurSelect</p> <p>17 receive statements from their nursing</p> <p>18 staff?</p> <p>19 A. Somewhat, somewhat frequently</p> <p>20 for different reasons.</p> <p>21 Q. What are some of those reasons?</p> <p>22 A. The last one we received was</p> <p>23 our computer wasn't fastened to the med</p> <p>24 cart so the nurse took it over a hump and</p> <p>25 it knocked the computer off and --</p>

8 (Pages 26 - 29)

<p style="text-align: right;">Page 30</p> <p>1 D. SHELLY</p> <p>2 (Reporter clarification.)</p> <p>3 A. The computer hopped off the med</p> <p>4 cart and hit the floor and damaged the back</p> <p>5 of the computer. So she sent a statement</p> <p>6 along with the picture of the damaged</p> <p>7 computer.</p> <p>8 Q. All right. So you received</p> <p>9 statements regarding damages or different</p> <p>10 injuries; is that --</p> <p>11 A. Yes. Employee injuries,</p> <p>12 correct.</p> <p>13 Q. Employee injuries. And what</p> <p>14 about patient injuries?</p> <p>15 A. Not -- I mean, I don't know if</p> <p>16 we had any other patient injuries here. I</p> <p>17 mean, there's -- you know, we've -- I'm</p> <p>18 sure we have. I'm sure we have received</p> <p>19 patient injury or report with the reference</p> <p>20 of a patient injury.</p> <p>21 Q. And what do you typically do</p> <p>22 when you receive a report regarding a</p> <p>23 patient injury?</p> <p>24 A. Typically we reach out to the</p> <p>25 facility and ask them for a copy of the</p>	<p style="text-align: right;">Page 32</p> <p>1 D. SHELLY</p> <p>2 information? Is it the nurse --</p> <p>3 Q. I'll rephrase my question.</p> <p>4 What steps does NurSelect</p> <p>5 generally take when NurSelect becomes aware</p> <p>6 that a patient had been injured?</p> <p>7 A. We typically reach out to the</p> <p>8 facility and try to acquire an incident</p> <p>9 report or some kind of statement from the</p> <p>10 facility of what happened.</p> <p>11 Q. And then what do you do next?</p> <p>12 A. Depends on what the statement</p> <p>13 says.</p> <p>14 Q. And so I'll bring it back to</p> <p>15 the Wiggins incident.</p> <p>16 Is there a reason that you did</p> <p>17 not take additional steps after receiving</p> <p>18 Ayanna McDowell's statement?</p> <p>19 A. I didn't see anything in the</p> <p>20 statement that I thought was any relation</p> <p>21 to our services at Brethren Village. I</p> <p>22 didn't see it necessary to.</p> <p>23 Q. I'll scroll to the statement</p> <p>24 just so we have a visual here.</p> <p>25 A. Sure.</p>
<p style="text-align: right;">Page 31</p> <p>1 D. SHELLY</p> <p>2 incident report or a statement.</p> <p>3 Q. And do you take any steps after</p> <p>4 reviewing additional reports and</p> <p>5 statements?</p> <p>6 A. At this point?</p> <p>7 Q. At any point generally.</p> <p>8 A. As of current, absolutely. We</p> <p>9 report everything to the insurance company.</p> <p>10 So prior to -- I'm sorry, repeat the</p> <p>11 question again. I kind of went off on it.</p> <p>12 Q. Oh, that's fine.</p> <p>13 So what does NurSelect</p> <p>14 generally do upon receiving incident</p> <p>15 reports of patient injury?</p> <p>16 A. We typically don't get incident</p> <p>17 reports. That's one of the issues.</p> <p>18 Q. So I'll be more -- I'll</p> <p>19 rephrase then.</p> <p>20 What does NurSelect generally</p> <p>21 do when receiving any information on</p> <p>22 whether it be a report or a statement or a</p> <p>23 phone call that a patient was injured when</p> <p>24 NurSelect staff member --</p> <p>25 A. Who's reaching out for that</p>	<p style="text-align: right;">Page 33</p> <p>1 D. SHELLY</p> <p>2 Q. And were you aware of what the</p> <p>3 extent of the injury was when you received</p> <p>4 the statement?</p> <p>5 A. She -- I mean, the -- no. In</p> <p>6 looking at the statement, it appeared that</p> <p>7 she was pulled away from this resident,</p> <p>8 that there was another aide in the room.</p> <p>9 This resident had fallen, and she came back</p> <p>10 and found that the resident had fallen; and</p> <p>11 the resident did have a little -- I think</p> <p>12 she mentioned blood on her -- yeah. She</p> <p>13 had bleeding. So she had informed the</p> <p>14 supervisor as she should have.</p> <p>15 Q. Understood. And so were you</p> <p>16 aware of what the care plan of the patient</p> <p>17 was, of Ms. Wiggins?</p> <p>18 A. No.</p> <p>19 Q. Did you or anyone else from</p> <p>20 NurSelect take any steps to investigate</p> <p>21 what the care plan was at that -- after you</p> <p>22 received the statement?</p> <p>23 A. Other than -- I don't know if I</p> <p>24 reached out and asked if anybody reached</p> <p>25 out and asked for a copy of the incident</p>

<p style="text-align: right;">Page 34</p> <p>1 D. SHELLY</p> <p>2 report. I don't know the answer to that;</p> <p>3 but, no, we don't have anything to do with</p> <p>4 the care that's provided in the nursing</p> <p>5 homes.</p> <p>6 Q. So does NurSelect have an</p> <p>7 incident report in your files?</p> <p>8 A. Not from the facility, just a</p> <p>9 statement from the -- from Ayanna.</p> <p>10 Q. Are you -- sure.</p> <p>11 Are you aware if there was an</p> <p>12 incident report at Brethren Village?</p> <p>13 A. I wouldn't. I'm not aware of</p> <p>14 that, no.</p> <p>15 Q. And are you aware if anyone</p> <p>16 from NurSelect asked for an incident report</p> <p>17 upon review of the statement?</p> <p>18 A. I'm not aware.</p> <p>19 Q. All right. So did you receive</p> <p>20 any other communications about Ms. Wiggins</p> <p>21 or the underlying action before -- before</p> <p>22 the dates of these email, October 14, 2022?</p> <p>23 Sorry. What was that? I think the audio</p> <p>24 cut out.</p> <p>25 A. No. Sorry.</p>	<p style="text-align: right;">Page 36</p> <p>1 D. SHELLY</p> <p>2 A. Yes.</p> <p>3 Q. And is this an agreement</p> <p>4 between Brethren Village and NurSelect?</p> <p>5 A. Yes.</p> <p>6 Q. And do you -- are you aware</p> <p>7 if -- actually, let me rephrase that. We</p> <p>8 were discussing Ms. Selemba from Saxton</p> <p>9 Stump in your correspondences with her.</p> <p>10 Do you recall if Ms. Selemba</p> <p>11 brought up this staffing agreement on the</p> <p>12 phone or otherwise when asking for the</p> <p>13 statement?</p> <p>14 A. No.</p> <p>15 Q. All right. I'm just going to</p> <p>16 scroll to page six of this agreement and</p> <p>17 I'll just point to Article 5, apportionment</p> <p>18 of liability and damages indemnification.</p> <p>19 And were you aware of this</p> <p>20 provision?</p> <p>21 A. Yes.</p> <p>22 Q. And did you have any concern</p> <p>23 that Brethren Village would invoke this</p> <p>24 provision due to the injuries of</p> <p>25 Ms. Wiggins?</p>
<p style="text-align: right;">Page 35</p> <p>1 D. SHELLY</p> <p>2 Q. Got it. All right. So now I'm</p> <p>3 going to pull up another document. Here we</p> <p>4 go. Okay. Everyone can see this. So I'm</p> <p>5 pulling up what's the title supplemental</p> <p>6 staffing agreement, and at the top it says</p> <p>7 NurSelect. I'll refer -- and this we'll</p> <p>8 mark as Exhibit 3.</p> <p>9 (Whereupon, Plaintiff's Exhibit</p> <p>10 3 supplemental staffing agreement was</p> <p>11 marked for identification as of this</p> <p>12 date.)</p> <p>13 Q. And so, Mr. Shelly, were you</p> <p>14 aware of this staffing agreement?</p> <p>15 A. Yes.</p> <p>16 Q. At the time of the incident?</p> <p>17 A. At the time, yes.</p> <p>18 Q. And was this staffing agreement</p> <p>19 in effect at the time of the incident,</p> <p>20 May 12th, 2021?</p> <p>21 A. Yes.</p> <p>22 Q. All right. And I'm just going</p> <p>23 to scroll to the bottom, which is PDF</p> <p>24 page 11 and also marked as page 11.</p> <p>25 Is this your signature?</p>	<p style="text-align: right;">Page 37</p> <p>1 D. SHELLY</p> <p>2 A. No.</p> <p>3 Q. Why not?</p> <p>4 A. I didn't see a reason why, why</p> <p>5 they would.</p> <p>6 Q. And that's based just solely on</p> <p>7 the statement, right?</p> <p>8 A. Yes, yes.</p> <p>9 Q. All right. So I'll keep it</p> <p>10 moving here.</p> <p>11 I'm going to pull up some other</p> <p>12 emails here. Here we go. Okay. Can</p> <p>13 everyone see this one? I think so. All</p> <p>14 right. And this is just -- my name is only</p> <p>15 on this because I converted it to a PDF,</p> <p>16 but you can ignore my name. All right.</p> <p>17 So we have an email, it says</p> <p>18 from action, sorry, I'll scroll -- all</p> <p>19 right. Scrolling to PDF page three, we</p> <p>20 have an email, it says from</p> <p>21 LindaRidenbaughLLR@SaxtonStump.com sent</p> <p>22 January 12, 2023, to David Shelly at</p> <p>23 NurSelect staffing and then we have a few</p> <p>24 people CCed including Kimberly Selemba.</p> <p>25 And then the subject line here is Brenda L.</p>

10 (Pages 34 - 37)



<p style="text-align: right;">Page 38</p> <p>1 D. SHELLY</p> <p>2 King, individually and as administratrix of</p> <p>3 the estate of Geraldine Wiggins versus</p> <p>4 Rehabilitation Center at Brethren Village,</p> <p>5 et al.</p> <p>6 So we'll mark this as</p> <p>7 Exhibit 4.</p> <p>8 (Whereupon, Plaintiff's Exhibit</p> <p>9 4 email was marked for identification</p> <p>10 as of this date.)</p> <p>11 Q. And, Mr. Shelly, do you recall</p> <p>12 this email?</p> <p>13 A. Not at the time; but, yes, I've</p> <p>14 seen this email.</p> <p>15 Q. You've seen this email. And</p> <p>16 that is your email address, correct?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. When did you see this</p> <p>19 email in your -- actually, let me backtrack</p> <p>20 a bit.</p> <p>21 Did you -- was this email in</p> <p>22 your inbox, your regular inbox?</p> <p>23 A. I don't know. I'm not sure.</p> <p>24 Q. When did you first see this</p> <p>25 email?</p>	<p style="text-align: right;">Page 40</p> <p>1 D. SHELLY</p> <p>2 perform a search?</p> <p>3 A. Because we were served with a</p> <p>4 Complaint.</p> <p>5 Q. And what search terms did you</p> <p>6 run?</p> <p>7 A. I'm not sure. Obviously the</p> <p>8 employee's name.</p> <p>9 Q. And when you were served with</p> <p>10 the Complaint, was there any other</p> <p>11 correspondence with that Complaint?</p> <p>12 A. I'm sorry, can you repeat the</p> <p>13 question?</p> <p>14 Q. Sure. When you were served</p> <p>15 with the Complaint, was there other</p> <p>16 correspondence or cover letter along with</p> <p>17 that complaint?</p> <p>18 A. It was physically served to the</p> <p>19 office.</p> <p>20 Q. Right. And was there anything</p> <p>21 with that physical copy such as a letter on</p> <p>22 top?</p> <p>23 A. Oh, I don't know. I don't</p> <p>24 recall.</p> <p>25 Q. Okay. All right. So I am</p>
<p style="text-align: right;">Page 39</p> <p>1 D. SHELLY</p> <p>2 A. On September 12, 2023.</p> <p>3 Q. Did you see -- and I'll be --</p> <p>4 I'll try to be more specific. Just bear</p> <p>5 with me here.</p> <p>6 Did you see the email without</p> <p>7 opening it prior to September 12, 2023?</p> <p>8 A. No.</p> <p>9 Q. So can you just elaborate on</p> <p>10 why you did not read this email until</p> <p>11 September 12, 2023?</p> <p>12 A. It went unnoticed.</p> <p>13 Q. So did you find it on</p> <p>14 September 12, 2023?</p> <p>15 A. Well, obviously I was in a bit</p> <p>16 of a panic; so I did a search and</p> <p>17 searched -- I had everybody do a search of</p> <p>18 their emails to find anything we could on</p> <p>19 this particular incident.</p> <p>20 Q. And --</p> <p>21 A. And I came across -- yeah, I</p> <p>22 came across the unread email. That popped</p> <p>23 up; and when I clicked on it, obviously I</p> <p>24 was horrified to see this.</p> <p>25 Q. And why did you and your staff</p>	<p style="text-align: right;">Page 41</p> <p>1 D. SHELLY</p> <p>2 going to pull up -- sorry, bear with me for</p> <p>3 a moment here.</p> <p>4 MS. MORIARTY: Actually, you</p> <p>5 know what, we've been going for about</p> <p>6 50 minutes. Would everyone want to</p> <p>7 take a five at this point?</p> <p>8 THE WITNESS: Sure.</p> <p>9 MR. KASTER: I'm fine going</p> <p>10 unless, Dave, you need a break.</p> <p>11 THE WITNESS: I'm good. I'm</p> <p>12 good.</p> <p>13 MS. MORIARTY: Okay. We'll</p> <p>14 keep going. We'll keep going. All</p> <p>15 right.</p> <p>16 Q. Okay. So I'm going to pull up</p> <p>17 another email here. All right so ignore my</p> <p>18 name at the top there. Okay.</p> <p>19 MS. MORIARTY: And we'll mark</p> <p>20 this -- actually, Ms. Veltri, would</p> <p>21 you mind just letting me know what</p> <p>22 number exhibit we're on?</p> <p>23 COURT REPORTER: Exhibit 5.</p> <p>24 MS. MORIARTY: Okay. Great.</p> <p>25 (Whereupon, Plaintiff's Exhibit</p>

11 (Pages 38 - 41)

<p style="text-align: right;">Page 42</p> <p>1 D. SHELLY</p> <p>2 5 email from Anthony Viola was marked</p> <p>3 for identification as of this date.)</p> <p>4 MS. MORIARTY: So I'm pulling</p> <p>5 up another email here. This is from</p> <p>6 Anthony Viola at Liberty Insurance</p> <p>7 dated October 5, 2023. And it's sent</p> <p>8 to Joan Gilbride, who is next to me,</p> <p>9 Zach Wilson at RSUI, which I will</p> <p>10 represent RSUI is Landmark. And</p> <p>11 then, Mr. Shelly, you are CCed along</p> <p>12 with some others from Liberty with</p> <p>13 the subject line Wiggins versus</p> <p>14 NurSelect.</p> <p>15 Q. Do you recognize this email?</p> <p>16 A. Yes.</p> <p>17 Q. All right. And, again, we'll</p> <p>18 mark this one as Exhibit 5. All right. So</p> <p>19 scrolling to the body of this email, okay.</p> <p>20 So I'm going to -- yes. So this is letting</p> <p>21 me highlight -- get the task bar away from</p> <p>22 there. Okay.</p> <p>23 So turning your attention to</p> <p>24 the highlighted portion here, it reads:</p> <p>25 The email was sent by Ms. Linda</p>	<p style="text-align: right;">Page 44</p> <p>1 D. SHELLY</p> <p>2 A. Yes.</p> <p>3 Q. All right. And so then</p> <p>4 directing your attention back to the</p> <p>5 highlighted portion which we just read, it</p> <p>6 says: Not recognizing the sender and/or</p> <p>7 email address, Mr. David Shelly did not</p> <p>8 open the email from Ms. Linda Reidenbaugh.</p> <p>9 So did you ignore the email or</p> <p>10 miss the email because you did not</p> <p>11 recognize the sender?</p> <p>12 A. I don't know. I don't recall</p> <p>13 receiving the email so I don't -- I'm not</p> <p>14 sure if I saw the name and ignored it or</p> <p>15 just never even saw it.</p> <p>16 Q. Okay. So do you recall having</p> <p>17 discussions with Liberty regarding the</p> <p>18 email?</p> <p>19 A. Regarding the email that I</p> <p>20 missed?</p> <p>21 Q. Yes.</p> <p>22 A. Oh. I would've definitely told</p> <p>23 them that I received this email, yeah.</p> <p>24 Q. And so just to make sure that I</p> <p>25 understand correctly, you don't recall</p>
<p style="text-align: right;">Page 43</p> <p>1 D. SHELLY</p> <p>2 Reidenbaugh, paralegal with Saxton &amp; Stump,</p> <p>3 Attorneys at Law, not recognizing the</p> <p>4 sender and/or email address, Mr. David</p> <p>5 Shelly did not open the email from</p> <p>6 Ms. Linda Reidenbaugh. As a matter of</p> <p>7 fact, it was not until the insured was</p> <p>8 served with the lawsuit in September that</p> <p>9 included a cover letter referencing the</p> <p>10 January 12, 2023, correspondence that</p> <p>11 Mr. Selly [sic] discovered the unopened</p> <p>12 email.</p> <p>13 So, sorry. I'll backtrack a</p> <p>14 bit. Who is Anthony Viola?</p> <p>15 A. He is one of the employees at</p> <p>16 Liberty Insurance.</p> <p>17 Q. And did you speak directly with</p> <p>18 Mr. Viola at any point?</p> <p>19 A. I don't -- no. I don't believe</p> <p>20 I did, but I can't answer for sure.</p> <p>21 Q. Sure. Did you speak with</p> <p>22 anyone at Liberty generally?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. And do you recall</p> <p>25 reading this email?</p>	<p style="text-align: right;">Page 45</p> <p>1 D. SHELLY</p> <p>2 whether you saw an email and missed it</p> <p>3 versus whether you did not see it at all?</p> <p>4 A. That email was brand new to me</p> <p>5 when I searched. That email was completely</p> <p>6 undiscovered.</p> <p>7 Q. What do you mean when you say</p> <p>8 discover?</p> <p>9 A. Saw. I mean, if -- obviously</p> <p>10 if I would have known what the contents</p> <p>11 were or recognized a name or something</p> <p>12 would have drawn my attention over that</p> <p>13 email, I would have definitely opened that</p> <p>14 email.</p> <p>15 Q. Understood. And I know -- let</p> <p>16 me try to clarify a bit here because I know</p> <p>17 with emails you often -- you have your home</p> <p>18 screen and you see a list of opened and</p> <p>19 unopened emails with just the subject line</p> <p>20 typically maybe first few words.</p> <p>21 And so when you say discover,</p> <p>22 are you referring to actually opening the</p> <p>23 email?</p> <p>24 A. No. Just seeing -- just if</p> <p>25 it's an email, I see that it looks like I</p>

12 (Pages 42 - 45)

Page 46

1 D. SHELLY

2 should open. I open the email. Obviously

3 I didn't see this email or think that it

4 should be opened or whatever. For whatever

5 reason, it wasn't opened. I can't tell you

6 why.

7 Q. Okay. So you don't open all of

8 your emails?

9 A. I don't, no.

10 Q. All right. So now I'm going to

11 switch -- all right. I'll switch to

12 another letter here which we'll mark as

13 Exhibit 6.

14 (Whereupon, Plaintiff's Exhibit

15 6 letter dated January 12, 2023, was

16 marked for identification as of this

17 date.)

18 Q. All right. So this is a letter

19 dated January 12, 2023, addressed to you

20 via your email.

21 A. Mm-hmm.

22 Q. And addressed to NurSelect.

23 And can you tell me on the

24 screen if the address to NurSelect, is that

25 the correct address to any --

Page 47

1 D. SHELLY

2 A. It is not.

3 Q. -- NurSelect office?

4 A. No.

5 Q. So that address on this letter

6 is 640 Business Center Drive, Third Floor,

7 King of Prussia, Pennsylvania?

8 A. Yes.

9 Q. Did NurSelect ever have an

10 office in King of Prussia?

11 A. Yes.

12 Q. And what was the NurSelect King

13 of Prussia address at that time?

14 A. 630 Freedom Business Center.

15 Q. Understand. Did NurSelect ever

16 receive this letter in the mail, --

17 A. No.

18 Q. -- regular mail? Okay.

19 A. No.

20 Q. Does NurSelect still have an

21 address at that King of Prussia address

22 that you just said?

23 A. No.

24 Q. When did NurSelect leave that

25 address?

Page 48

1 D. SHELLY

2 A. Mail was still forwarded. Are

3 we talking about the mail or just the

4 physical address? It was --

5 Q. The physical address. When you

6 were there, when did NurSelect leave the

7 physical address?

8 A. I don't know when I cancelled

9 that contract. It's like a Regus -- we

10 opened it during COVID so we figured we'll

11 just do, like, a Regus type shared space.

12 So I'm not sure when we actually cancelled

13 that contract. We still have the mail

14 being forwarded up until recently if not

15 still currently from that address to us.

16 Q. All right. And what address is

17 it forwarded to, which --

18 A. 1829 New Holland Road,

19 Suite 13, Reading.

20 Q. Oh, yes. You had put that on

21 the record earlier.

22 A. Yes.

23 Q. So I'll refer to that as the

24 Reading address.

25 A. Sure.

Page 49

1 D. SHELLY

2 Q. Did the Reading address ever

3 receive this letter at any point?

4 A. No.

5 Q. Okay. So when did you first

6 read this letter?

7 A. September 12, 2023.

8 Q. And just for the record, this

9 letter was an attachment to the email from

10 Linda Reidenbaugh, correct?

11 A. Yes.

12 Q. So you read this letter when

13 you first opened the email?

14 A. That's correct, yes.

15 Q. So what did you do upon reading

16 the letter?

17 A. Called Liberty Insurance.

18 Actually, we may have -- I may have even

19 called Liberty before. I'm sure I would

20 have called them again when I read this

21 letter.

22 Q. Did you read this letter after

23 reading the suit that you were --

24 A. No, no. Actually we were en

25 route to pick up the suit when we conducted

<p style="text-align: right;">Page 50</p> <p>1 D. SHELLY</p> <p>2 the search of emails and that's when I came</p> <p>3 across this.</p> <p>4 Q. So when you say you were en</p> <p>5 route, where were you in route from?</p> <p>6 A. From the Reading office to the</p> <p>7 Lancaster office.</p> <p>8 Q. Okay. And the -- just to</p> <p>9 clarify, the Lancaster office is where the</p> <p>10 suit was served?</p> <p>11 A. That's correct.</p> <p>12 Q. And that was an September 12,</p> <p>13 2023?</p> <p>14 A. Yes.</p> <p>15 Q. And so just to get the timeline</p> <p>16 down, when were you aware -- when did you</p> <p>17 become aware that the suit was going to be</p> <p>18 served?</p> <p>19 A. When the suit was going to be</p> <p>20 served? I only found out after it was</p> <p>21 served.</p> <p>22 Q. Okay. So who accepted the suit</p> <p>23 for NurSelect?</p> <p>24 A. We had two employees in the</p> <p>25 Lancaster office at that point.</p>	<p style="text-align: right;">Page 52</p> <p>1 D. SHELLY</p> <p>2 highlighted portion here in the first</p> <p>3 paragraph: Our investigation has revealed</p> <p>4 that Ayanna McDowell, CNA, who is employed</p> <p>5 by NurSelect LLC at the relevant time, had</p> <p>6 direct involvement in this alleged fall.</p> <p>7 Upon confirming that Ayanna and McDowell,</p> <p>8 CNA, was an employee of NurSelect and</p> <p>9 reviewing contractual agreement between</p> <p>10 NurSelect and Brethren Village, our office</p> <p>11 did not meet with Ms. McDowell.</p> <p>12 So were you aware that Saxton</p> <p>13 Stump, as attorneys for Brethren Village,</p> <p>14 had been investigating the involvement of</p> <p>15 McDowell?</p> <p>16 A. To be honest, I didn't</p> <p>17 understand the relationship between Saxton</p> <p>18 Stump and Brethren Village at the time. I</p> <p>19 didn't understand their relationship.</p> <p>20 Q. What did -- who did you</p> <p>21 understand Saxton Stump to be?</p> <p>22 A. Just a personal attorney of</p> <p>23 Brethren Village. Legal counsel, I'm</p> <p>24 not -- I'm not sure. I mean, nothing</p> <p>25 crossed my mind of who Saxton Stump was</p>
<p style="text-align: right;">Page 51</p> <p>1 D. SHELLY</p> <p>2 Q. Okay. And did they call you</p> <p>3 upon receiving this suit?</p> <p>4 A. Yes.</p> <p>5 Q. And who was -- sorry. Let me</p> <p>6 rephrase.</p> <p>7 So you -- did I understand</p> <p>8 directly that you had yourself and staff</p> <p>9 running some search terms prior to</p> <p>10 reviewing the suit?</p> <p>11 A. En route. We were notified of</p> <p>12 the suit en route. I asked I think just --</p> <p>13 I don't know who I asked. I asked one or</p> <p>14 more employees to do a search to see if we</p> <p>15 had any information on Ayanna.</p> <p>16 Q. Got it. And did one of your</p> <p>17 employees read the suit and inform you that</p> <p>18 Ayanna was --</p> <p>19 A. Yes. The person who received</p> <p>20 the suit. I asked her to read as much of</p> <p>21 the suit as she could to me at that point.</p> <p>22 Q. Okay. Understood. All right.</p> <p>23 So going into this letter specifically --</p> <p>24 sorry, highlighting mistake.</p> <p>25 Okay. So this letter states,</p>	<p style="text-align: right;">Page 53</p> <p>1 D. SHELLY</p> <p>2 with Brethren Village.</p> <p>3 Q. Okay. So were you aware at</p> <p>4 this point and this point being -- sorry.</p> <p>5 I'll backtrack.</p> <p>6 When you were served with the</p> <p>7 suit or right -- just prior to being served</p> <p>8 with the suit, were you aware that there</p> <p>9 was an ongoing suit between Brethren</p> <p>10 Village and the Wiggins' estate?</p> <p>11 A. No.</p> <p>12 Q. So the first time you became</p> <p>13 aware of that was when NurSelect was</p> <p>14 served?</p> <p>15 A. That's correct.</p> <p>16 Q. And so, again, this letter --</p> <p>17 I'll scroll up. You have January 12, 2023.</p> <p>18 And then the email as well, I'm pulling up</p> <p>19 here Exhibit 5, I believe, also dated</p> <p>20 January 12, 2023.</p> <p>21 Did you receive any other</p> <p>22 communications, email, phone calls, or any</p> <p>23 kind of communications from Saxton Stump</p> <p>24 after January 12, 2023?</p> <p>25 A. No.</p>

14 (Pages 50 - 53)



<p style="text-align: right;">Page 54</p> <p>1 D. SHELLY</p> <p>2 Q. And backtracking a bit, you</p> <p>3 mentioned you ran a search -- I believe you</p> <p>4 mentioned --</p> <p>5 A. Actually, let me clarify that.</p> <p>6 In between January 12, 2023, and</p> <p>7 September 12, 2023?</p> <p>8 Q. Yes.</p> <p>9 A. Okay. Then no, I did not.</p> <p>10 Q. So your answer is no, okay.</p> <p>11 All right. So then</p> <p>12 backtracking a bit. You mentioned you had</p> <p>13 email searches run.</p> <p>14 Do you recall if you found</p> <p>15 anything else in those email searches</p> <p>16 regarding the Wiggins' incident?</p> <p>17 A. No. I mean, I would have seen</p> <p>18 the statement. She had a bunch of shift</p> <p>19 confirmations and obviously this one --</p> <p>20 this one took first place. This one stole</p> <p>21 the show.</p> <p>22 Q. Okay. Bear with me for a</p> <p>23 minute here. Okay. So I'm just going to</p> <p>24 briefly pull up -- I believe -- I think</p> <p>25 we're on Exhibit 7. So we'll mark this as</p>	<p style="text-align: right;">Page 56</p> <p>1 D. SHELLY</p> <p>2 A. Yes.</p> <p>3 Q. All right. So I'm going to</p> <p>4 pull up -- and this will be Exhibit 8,</p> <p>5 policy application.</p> <p>6 (Whereupon, Plaintiff's Exhibit</p> <p>7 8 policy application was marked for</p> <p>8 identification as of this date.)</p> <p>9 Q. Do you recognize this document?</p> <p>10 A. Yes.</p> <p>11 Q. And do you recognize this to be</p> <p>12 the policy application for the insurance</p> <p>13 policy at issue in this current action?</p> <p>14 A. Yes.</p> <p>15 Q. All right. So I'm going to</p> <p>16 scroll. I'm on PDF or page two of two on</p> <p>17 the PDF. Well, PDF page two. Sorry. PDF</p> <p>18 page two.</p> <p>19 Is this your signature?</p> <p>20 A. Yes.</p> <p>21 Q. And then I'll scroll down to</p> <p>22 the other part of the application titled:</p> <p>23 Renewal Application for Miscellaneous</p> <p>24 Medical Professional Liability Insurance</p> <p>25 and I'm scrolling to -- all right. We have</p>
<p style="text-align: right;">Page 55</p> <p>1 D. SHELLY</p> <p>2 Exhibit 7.</p> <p>3 (Whereupon, Plaintiff's Exhibit</p> <p>4 7 insurance policy was marked for</p> <p>5 identification as of this date.)</p> <p>6 Q. And we have a document stating</p> <p>7 professional liability insurance and I'll</p> <p>8 just scroll.</p> <p>9 So very quickly, Mr. Shelly, do</p> <p>10 you recognize this document?</p> <p>11 A. Yes.</p> <p>12 Q. And I will represent to you</p> <p>13 that -- that myself and Mr. Kaster, we have</p> <p>14 so stipulated that this is a true and</p> <p>15 correct copy of the insurance policy at</p> <p>16 issue in this case. All right. So turning</p> <p>17 to what's been Bates stamped as LAND9, and</p> <p>18 I'll just direct your attention, we have</p> <p>19 policy period from 3/1/2023 to 3/1/2024.</p> <p>20 Mr. Shelly, were you involved</p> <p>21 in applying for this policy of insurance</p> <p>22 for NurSelect?</p> <p>23 A. Yes, yes.</p> <p>24 Q. And were you the one who filled</p> <p>25 out the application for the insurance?</p>	<p style="text-align: right;">Page 57</p> <p>1 D. SHELLY</p> <p>2 question number 16 which says: In the past</p> <p>3 12 months has any professional liability</p> <p>4 claim or suit been made against the</p> <p>5 applicant or any of its predecessor firms</p> <p>6 and you clicked no.</p> <p>7 And do you recall answering</p> <p>8 that question?</p> <p>9 A. I mean, I don't recall it; but</p> <p>10 I did, yes.</p> <p>11 Q. Sure. And is this your</p> <p>12 signature again at the bottom under the</p> <p>13 representation paragraph?</p> <p>14 A. Yes.</p> <p>15 Q. And it's dated 1/26/2023?</p> <p>16 A. Correct.</p> <p>17 Q. And this date, excuse me, let</p> <p>18 me backtrack.</p> <p>19 And so as of 1/26/2023, you</p> <p>20 still had not read the email which I'll</p> <p>21 pull up again dated January 12, 2023?</p> <p>22 A. That's correct.</p> <p>23 MS. MORIARTY: All right. So I</p> <p>24 think at this point, let's maybe take</p> <p>25 a ten. I'm going to review my notes;</p>

15 (Pages 54 - 57)

<p style="text-align: right;">Page 58</p> <p>1 D. SHELLY</p> <p>2 but I don't think we'll be too much</p> <p>3 longer. Sound good?</p> <p>4 THE WITNESS: Yup.</p> <p>5 (Whereupon, a short recess was</p> <p>6 taken.)</p> <p>7 Q. All right. So, Mr. Shelly,</p> <p>8 could you just describe for me the business</p> <p>9 relationship with Brethren Village and</p> <p>10 NurSelect?</p> <p>11 A. Yes. So we're a supplemental</p> <p>12 staffing firm; so we have a supplemental</p> <p>13 staffing agreement with -- so they have</p> <p>14 holes in their schedule or holes in their,</p> <p>15 I guess, the nurse schedule. And they</p> <p>16 reach out to us to help fill those holes,</p> <p>17 so if they had a CNA call off --</p> <p>18 Q. Understood.</p> <p>19 A. Does that make sense?</p> <p>20 Q. Sure. And just to clarify,</p> <p>21 Brethren Village, is that a nursing home</p> <p>22 facility?</p> <p>23 A. It is, yes.</p> <p>24 Q. All right. And when did</p> <p>25 NurSelect begin their relationship with</p>	<p style="text-align: right;">Page 60</p> <p>1 D. SHELLY</p> <p>2 home care agency. We provided home care</p> <p>3 services.</p> <p>4 Q. Okay. All right. So I am</p> <p>5 going to -- sorry. Let me just pull up --</p> <p>6 one of my tabs disappeared. Sorry. One</p> <p>7 moment. Here they are, okay. Go back to</p> <p>8 share screen. Here we go. Share. Okay.</p> <p>9 All right. So I'm pulling up Exhibit 8.</p> <p>10 I'm pulling back up Exhibit 8, the policy</p> <p>11 application. All right. So I just wanted</p> <p>12 to clarify a couple things here.</p> <p>13 So this is dated, your</p> <p>14 signature on this application here is dated</p> <p>15 1/26/2023?</p> <p>16 A. Yes.</p> <p>17 Q. But then flipping back to --</p> <p>18 and here we have the email again that</p> <p>19 contained as attachment that attorney</p> <p>20 letter date January 12 of 2023.</p> <p>21 And so when you signed the</p> <p>22 policy application on January 26, 2023,</p> <p>23 that email had been received by your inbox,</p> <p>24 right?</p> <p>25 MR. KASTER: Objection to the</p>
<p style="text-align: right;">Page 59</p> <p>1 D. SHELLY</p> <p>2 Brethren Village?</p> <p>3 A. I don't know offhand. Whatever</p> <p>4 the date was on the staffing agreement</p> <p>5 would have been the first relationship.</p> <p>6 Q. All right. And just forgive me</p> <p>7 if you already answered this, but when did</p> <p>8 you start NurSelect?</p> <p>9 A. I formed it in March of 2019,</p> <p>10 but didn't start staff -- didn't actually</p> <p>11 work it until I believe it was either March</p> <p>12 or May of 2020.</p> <p>13 Q. All right. And then you had</p> <p>14 mentioned you were at a different agency</p> <p>15 before starting NurSelect?</p> <p>16 A. Yes.</p> <p>17 Q. How long were you with that</p> <p>18 agency?</p> <p>19 A. 2008 until 2019 so 11 years --</p> <p>20 no, nine years, nine years.</p> <p>21 Q. Sorry to cut you off. Sure.</p> <p>22 Can you just describe briefly</p> <p>23 what that agency was?</p> <p>24 A. It was another staffing agency</p> <p>25 similar to NurSelect. And it was also a</p>	<p style="text-align: right;">Page 61</p> <p>1 D. SHELLY</p> <p>2 form of the question. Could you</p> <p>3 define the word received?</p> <p>4 Q. That email was present in the</p> <p>5 inbox, correct?</p> <p>6 A. I don't recall seeing it so --</p> <p>7 Q. I'm sorry. I didn't catch</p> <p>8 that. Would you mind repeating?</p> <p>9 A. I didn't see it. I didn't</p> <p>10 notice.</p> <p>11 Q. Understood. But it was, in</p> <p>12 fact, present?</p> <p>13 A. I would assume it was present,</p> <p>14 yes.</p> <p>15 Q. All right. All right. I</p> <p>16 think -- I think we're all set here. I</p> <p>17 think that's everything I have for you</p> <p>18 today. Thank you so much for taking time</p> <p>19 out of your day, Mr. Shelly.</p> <p>20 THE WITNESS: Sure. Thank you.</p> <p>21 MR. KASTER: I have some</p> <p>22 questions to follow up on.</p> <p>23 MS. MORIARTY: All right.</p> <p>24 EXAMINATION BY</p> <p>25 MR. KASTER:</p>

<p style="text-align: right;">Page 62</p> <p>1 D. SHELLY</p> <p>2 Q. Mr. Shelly, I just want to make</p> <p>3 sure I'm understanding some things.</p> <p>4 Regardless of whether or not</p> <p>5 that email -- and we're talking about the</p> <p>6 one that was sent by Mrs. Reidenbaugh on</p> <p>7 January 12, 2023. Regardless of whether or</p> <p>8 not it was present in the inbox, you were</p> <p>9 not aware of that email and had no</p> <p>10 knowledge of its existence until</p> <p>11 September 12, 2023; is that correct?</p> <p>12 A. That's correct.</p> <p>13 Q. And you had no knowledge of a</p> <p>14 lawsuit pending against Brethren Village</p> <p>15 until September 12th, 2023; is that</p> <p>16 correct?</p> <p>17 A. That's correct, yeah.</p> <p>18 Q. And you had no knowledge of any</p> <p>19 claims by Brethren Village against</p> <p>20 NurSelect until September 12, 2023; is that</p> <p>21 correct?</p> <p>22 MS. MORIARTY: Objection.</p> <p>23 A. That's correct.</p> <p>24 Q. And we were shown a statement</p> <p>25 of Ayanna McDowell; and in reading that</p>	<p style="text-align: right;">Page 64</p> <p>1 D. SHELLY</p> <p>2 A. Thanks.</p> <p>3 MS. MORIARTY: All right. If</p> <p>4 you wouldn't mind -- can you hear me?</p> <p>5 THE WITNESS: Yes.</p> <p>6 MS. MORIARTY: Okay. Sorry.</p> <p>7 Can we just take two minutes and then</p> <p>8 I'm just going to review my notes</p> <p>9 briefly one more time, if that's all</p> <p>10 right.</p> <p>11 THE WITNESS: That's fine with</p> <p>12 me. Yup.</p> <p>13 MS. MORIARTY: All right.</p> <p>14 (Whereupon, a short recess was</p> <p>15 taken.)</p> <p>16 EXAMINATION BY</p> <p>17 MS. MORIARTY:</p> <p>18 Q. Just another few questions for</p> <p>19 you, Mr. Shelly. I'm gong to share my</p> <p>20 screen again. Okay. Here we go. All</p> <p>21 right. So I pulled back up, I believe this</p> <p>22 is Exhibit 2. And we have PDF page -- I</p> <p>23 think PDF page three. Statement of Ayanna</p> <p>24 McDowell.</p> <p>25 And as we said, you received</p>
<p style="text-align: right;">Page 63</p> <p>1 D. SHELLY</p> <p>2 statement, did you -- when you read it, did</p> <p>3 you believe that amounted to a claim or a</p> <p>4 possible claim against NurSelect?</p> <p>5 A. No.</p> <p>6 Q. When you eventually became</p> <p>7 aware of the January 12th, 2023, email, was</p> <p>8 there any electronic receipt associated</p> <p>9 with that email? Was there any notice that</p> <p>10 was accompanying that saying that you</p> <p>11 opened it?</p> <p>12 A. Not that I can tell, no.</p> <p>13 Q. I think they're called return</p> <p>14 receipts? Was there any return receipt</p> <p>15 with it to your knowledge?</p> <p>16 A. No. I didn't have to do</p> <p>17 anything. I just opened it up.</p> <p>18 Q. Okay. And are there emails</p> <p>19 that you -- that will end up in your inbox</p> <p>20 that you aren't even aware are there on a</p> <p>21 daily basis?</p> <p>22 A. Yes. Yes.</p> <p>23 Q. Sorry. I'm just making sure</p> <p>24 I -- all right. I think that's all the</p> <p>25 questions I have. Thank you.</p>	<p style="text-align: right;">Page 65</p> <p>1 D. SHELLY</p> <p>2 this on May 12th of 2021, right?</p> <p>3 A. Yes.</p> <p>4 Q. And you did, in fact, read this</p> <p>5 on May 12th of 2021?</p> <p>6 A. Most likely. I don't recall.</p> <p>7 Q. Or shortly thereafter, but you</p> <p>8 didn't --</p> <p>9 A. Yes, yes, yes.</p> <p>10 Q. Okay. So we're just going to</p> <p>11 go through briefly. And I'll start at the</p> <p>12 last sentence: And then I've seen she was</p> <p>13 bleeding and told the supervisor.</p> <p>14 So you knew that there was a</p> <p>15 patient who was injured to the point of</p> <p>16 bleeding, right?</p> <p>17 A. Yes.</p> <p>18 Q. And did you -- you also knew</p> <p>19 that this patient was elderly, right?</p> <p>20 A. She was in a nursing home so,</p> <p>21 yes.</p> <p>22 Q. So you assumed at that point</p> <p>23 that we were dealing with an elderly -- an</p> <p>24 elderly patient?</p> <p>25 A. Yes.</p>

17 (Pages 62 - 65)

<div>Page 66</div> <div><div>1D. SHELLY</div><div>2Q. And you did also know that</div><div>3Ayanna McDowell was a NurSelect employee,</div><div>4right?</div><div>5A. Yes.</div><div>6Q. And then upon reading this</div><div>7statement, you also knew that Ayanna had</div><div>8left Ms. Wiggins alone, right?</div><div>9A. I had known that she was sent</div><div>10away by the nurse.</div><div>11Q. So you had known that</div><div>12Ms. McDowell had left the room which</div><div>13Geraldine Wiggins was in?</div><div>14A. Yes.</div><div>15Q. And then Ms. Wiggins was</div><div>16injured to the point of bleeding after</div><div>17that?</div><div>18A. Yes.</div><div>19Q. And yet as you sit here today,</div><div>20you did not think upon reading this</div><div>21statement that there was any chance that</div><div>22this could result in any liability for</div><div>23NurSelect, right?</div><div>24A. That's correct.</div><div>25MR. KASTER: Objection. Asked</div></div>	<div>Page 68</div> <div><div>1</div><div>2EXHIBITS</div><div>3</div><div>4PLAINTIFF'S EXHIBITS</div><div>5</div><div>6EXHIBIT EXHIBITPAGE</div><div>7NUMBER DESCRIPTION</div><div>81Fourth Amended Complaint4</div><div>9and Joinder Complaint</div><div>102Emails produced by26</div><div>11NurSelect</div><div>123Supplemental staffing35</div><div>13agreement</div><div>144Email38</div><div>155Email from Anthony Viola42</div><div>166Letter dated January 12,46</div><div>172023,</div><div>187Insurance policy55</div><div>198Policy application56</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>
<div>Page 67</div> <div><div>1D. SHELLY</div><div>2and answered.</div><div>3MS. MORIARTY: All right. I</div><div>4don't think I have anything else, and</div><div>5so with that, I think we can wrap it</div><div>6up. Thank you, again, Mr. Shelly.</div><div>7THE WITNESS: Thank you.</div><div>8MS. MORIARTY: And have a good</div><div>9day everybody.</div><div>10MR. KASTER: I'll order an</div><div>11email copy only if possible.</div><div>12(Whereupon, at 10:40 a.m. the</div><div>13Examination of this witness was</div><div>14concluded.)</div><div>15</div><div>16</div><div>17</div><div>18</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>	<div>Page 69</div> <div><div>1</div><div>2INDEX</div><div>3</div><div>4EXAMINATION BYPAGE</div><div>5MS. MORIARTY3</div><div>6MR. KASTER61</div><div>7MS. MORIARTY64</div><div>8</div><div>9</div><div>10INFORMATION AND/OR DOCUMENTS REQUESTED</div><div>11</div><div>12INFORMATION AND/OR DOCUMENTSPAGE</div><div>13NONE</div><div>14</div><div>15QUESTIONS MARKED FOR RULINGS</div><div>16</div><div>17QUESTIONPAGE LINE</div><div>18NONE</div><div>19</div><div>20</div><div>21</div><div>22</div><div>23</div><div>24</div><div>25</div></div>

18 (Pages 66 - 69)



Page 70

1

2 CERTIFICATE

3

4 STATE OF NEW YORK )

: SS.:

5 COUNTY OF SUFFOLK )

6

7

8 I, NICOLE VELTRI, RPR, CRR, a Notary

9 Public for and within the State of New

10 York, do hereby certify:

11 That the witness whose examination is

12 hereinbefore set forth was duly sworn and

13 that such examination is a true record of

14 the testimony given by that witness.

15 I further certify that I am not

16 related to any of the parties to this

17 action by blood or by marriage and that I

18 am in no way interested in the outcome of

19 this matter.

20 IN WITNESS WHEREOF, I have hereunto

21 set my hand this 20th day of November 2024.

22

23



24 NICOLE VELTRI, RPR, CRR

25

19 (Page 70)

[&amp; - absolutely]

Page 1

<b>&amp;</b>	<b>13</b> 14:14 48:19	34:22	<b>5</b>
<b>&amp;</b> 2:4,8 43:2	<b>14</b> 25:15 34:22	<b>2023</b> 12:22	<b>5</b> 36:17 41:23
<b>0</b>	<b>14th</b> 28:16	15:3 37:22	42:2,7,18
<b>01412</b> 1:6	<b>16</b> 57:2	39:2,7,11,14	53:19 68:15
<b>1</b>	<b>17110</b> 2:10	42:7 43:10	<b>50</b> 41:6
<b>1</b> 4:24 5:2	<b>17601</b> 14:5	46:15,19 49:7	<b>53</b> 18:22
18:12,20,21	<b>1829</b> 14:13	50:13 53:17,20	<b>55</b> 68:18
68:8	48:18	53:24 54:6,7	<b>56</b> 68:19
<b>1/26/2023</b>	<b>19540</b> 3:13	57:21 60:20,22	<b>5:24</b> 1:6
57:15,19 60:15	<b>19607</b> 14:14	62:7,11,15,20	<b>6</b>
<b>10</b> 19:12	<b>19900</b> 70:23	63:7 68:17	<b>6</b> 46:13,15
<b>10/19</b> 27:24	<b>19th</b> 15:17,18	<b>2024</b> 1:10	68:16
<b>105</b> 2:9	16:3 24:11	70:21	<b>61</b> 69:6
<b>10595</b> 2:5	28:3	<b>20th</b> 70:21	<b>630</b> 47:14
<b>10:40</b> 67:12	<b>1st</b> 2:5	<b>25</b> 18:21	<b>64</b> 69:7
<b>10th</b> 16:2	<b>2</b>	<b>255</b> 14:3	<b>640</b> 47:6
<b>11</b> 35:24,24	<b>2</b> 25:3 26:9,11	<b>2578</b> 2:9	<b>7</b>
59:19	64:22 68:10	<b>26</b> 60:22 68:10	<b>7</b> 54:25 55:2,4
<b>12</b> 18:23 21:11	<b>20</b> 1:10 25:16	<b>3</b>	68:18
25:21 37:22	<b>200</b> 2:5	<b>3</b> 35:8,10 68:12	<b>8</b>
39:2,7,11,14	<b>2008</b> 59:19	69:5	<b>8</b> 56:4,7 60:9
43:10 46:15,19	<b>201</b> 14:4	<b>3/1/2023</b> 55:19	60:10 68:19
49:7 50:12	<b>2019</b> 59:9,19	<b>3/1/2024</b> 55:19	<b>815</b> 3:12
53:17,20,24	<b>202</b> 14:4,4,4	<b>35</b> 68:12	<b>9</b>
54:6,7 57:3,21	<b>2020</b> 9:13	<b>38</b> 68:14	<b>9:06</b> 1:11
60:20 62:7,11	59:12	<b>4</b>	<b>a</b>
62:20 68:16	<b>2021</b> 18:23	<b>4</b> 38:7,9 68:8	<b>a.m.</b> 1:11 67:12
<b>12th</b> 12:22 15:3	20:9 21:12,24	68:14	<b>ability</b> 5:13
20:9 25:19	22:3 25:19,21	<b>42</b> 68:15	6:18
26:25 35:20	26:25 27:4	<b>46</b> 68:16	<b>absolutely</b> 31:8
62:15 63:7	35:20 65:2,5		
65:2,5	<b>2022</b> 16:2,3		
	25:15,16 28:5		

[accepted - ayanna]

Page 2

<b>accepted</b> 50:22 <b>accompanying</b> 63:10 <b>account</b> 16:17 <b>accurately</b> 5:21 <b>acquire</b> 32:8 <b>action</b> 1:5 4:6,7 4:10,10,20 12:14 14:24 15:2,5 18:3,9 28:8 34:21 37:18 56:13 70:17 <b>actions</b> 23:25 <b>actually</b> 8:6 18:6 36:7 38:19 41:4,20 45:22 48:12 49:18,24 54:5 59:10 <b>additional</b> 31:4 32:17 <b>address</b> 3:11 13:25 14:13 25:6 38:16 43:4 44:7 46:24,25 47:5 47:13,21,21,25 48:4,5,7,15,16 48:24 49:2 <b>addressed</b> 46:19,22 <b>addresses</b> 14:16	<b>administrator</b> 15:20 16:12 <b>administratrix</b> 3:25 38:2 <b>agency</b> 13:10 13:12,16,20 59:14,18,23,24 60:2 <b>agreed</b> 6:15 <b>agreement</b> 35:6 35:10,14,18 36:3,11,16 52:9 58:13 59:4 68:13 <b>ahead</b> 4:19 7:25 <b>aide</b> 33:8 <b>al</b> 4:4 38:5 <b>allegation</b> 18:9 <b>allegations</b> 19:17 <b>alleged</b> 52:6 <b>alter</b> 5:13 <b>amend</b> 8:6 <b>amended</b> 4:22 5:2 68:8 <b>american</b> 1:3 3:19 <b>amounted</b> 63:3 <b>answer</b> 5:14 20:24 34:2 43:20 54:10 <b>answered</b> 59:7 67:2	<b>answering</b> 6:11 57:7 <b>answers</b> 5:18 <b>anthony</b> 42:2,6 43:14 68:15 <b>anybody</b> 21:23 33:24 <b>appeared</b> 33:6 <b>applicant</b> 57:5 <b>application</b> 55:25 56:5,7 56:12,22,23 60:11,14,22 68:19 <b>applying</b> 55:21 <b>apportionment</b> 36:17 <b>approximately</b> 23:13 <b>article</b> 36:17 <b>asked</b> 21:18 33:24,25 34:16 51:12,13,13,20 66:25 <b>asking</b> 3:21 15:22 28:21 36:12 <b>aspects</b> 10:3 <b>assigned</b> 26:24 <b>assistant</b> 26:19 <b>associated</b> 63:8 <b>assume</b> 61:13 <b>assumed</b> 17:21 65:22	<b>attached</b> 20:16 <b>attachment</b> 49:9 60:19 <b>attempted</b> 19:5 <b>attention</b> 18:22 42:23 44:4 45:12 55:18 <b>attorney</b> 7:9,16 7:20 15:21 16:19 17:12,19 24:12 52:22 60:19 <b>attorneys</b> 2:4,9 15:10 19:18 43:3 52:13 <b>audio</b> 34:23 <b>avenue</b> 14:3,13 <b>aware</b> 14:25 15:5 17:24 18:5,8 19:16 20:5 22:5 24:8 24:21 28:9 32:5 33:2,16 34:11,13,15,18 35:14 36:6,19 50:16,17 52:12 53:3,8,13 62:9 63:7,20 <b>ayanna</b> 16:15 19:13 23:16 25:5,18,25 26:15,16 32:18 34:9 51:15,18 52:4,7 62:25
---	--	--	---

[ayanna - collectively]

Page 3

64:23 66:3,7 <b>ayanna's</b> 15:22 16:19 20:15 21:21	64:21 <b>best</b> 6:3 <b>billing</b> 10:16 <b>bit</b> 10:9 18:7 38:20 39:15 43:14 45:16 54:2,12 <b>bleeding</b> 33:13 65:13,16 66:16 <b>blood</b> 19:4 33:12 70:17 <b>body</b> 42:19 <b>borgeest</b> 2:4 <b>bottom</b> 35:23 57:12 <b>boy</b> 15:16 <b>brand</b> 45:4 <b>break</b> 6:9,12 41:10 <b>brenda</b> 3:24 37:25 <b>brethren</b> 4:3,10 12:15 15:20 16:12 17:13,16 17:18 19:17 22:14,16,19,21 23:10 26:25 32:21 34:12 36:4,23 38:4 52:10,13,18,23 53:2,9 58:9,21 59:2 62:14,19 <b>briefly</b> 8:8 9:16 9:23 54:24	59:22 64:9 65:11 <b>bring</b> 32:14 <b>broker</b> 10:24 11:5 <b>brought</b> 36:11 <b>brushing</b> 19:2 <b>bryon</b> 2:10 12:5 <b>bunch</b> 54:18 <b>business</b> 47:6 47:14 58:8 <b>butler</b> 14:3	<b>cced</b> 37:24 42:11 <b>center</b> 4:3 38:4 47:6,14 <b>certified</b> 26:18 <b>certify</b> 70:10,15 <b>chain</b> 25:14 <b>chance</b> 66:21 <b>charged</b> 22:18 <b>chief</b> 13:13 <b>chilcote</b> 2:8 <b>civil</b> 1:5 <b>claim</b> 3:22 10:21 11:6 57:4 63:3,4 <b>claims</b> 10:23 62:19 <b>clarification</b> 30:2 <b>clarify</b> 7:15 12:12 15:4 21:5 45:16 50:9 54:5 58:20 60:12 <b>click</b> 18:14 <b>clicked</b> 39:23 57:6 <b>client</b> 20:4 <b>cna</b> 15:23 19:2 19:13 52:4,8 58:17 <b>cnas</b> 9:18 <b>collectively</b> 4:23 26:9	
<b>b</b>				
<b>b</b> 68:2 <b>back</b> 14:23 19:10 20:8,9 30:4 32:14 33:9 44:4 60:7 60:10,17 64:21 <b>backtrack</b> 18:6 38:19 43:13 53:5 57:18 <b>backtracking</b> 54:2,12 <b>backwards</b> 19:7 <b>balance</b> 19:6 <b>bar</b> 42:21 <b>base</b> 19:7 <b>based</b> 37:6 <b>basic</b> 5:9,9 <b>basically</b> 11:2 <b>basis</b> 63:21 <b>bates</b> 55:17 <b>bathroom</b> 19:3 <b>bear</b> 18:14 39:4 41:2 54:22 <b>bedside</b> 19:8 <b>believe</b> 43:19 53:19 54:3,24 59:11 63:3		<b>c</b>		
		<b>c</b> 2:2 70:2,2 <b>call</b> 31:23 51:2 58:17 <b>called</b> 3:2 13:9 49:17,19,20 63:13 <b>calls</b> 10:19 53:22 <b>cancelled</b> 48:8 48:12 <b>care</b> 11:4 13:10 19:3,13 33:16 33:21 34:4 60:2,2 <b>cart</b> 29:24 30:4 <b>case</b> 10:21 25:2 55:16 <b>catch</b> 8:15 11:15 61:7		



## [communications - david]

Page 4

<b>communicati...</b> 34:20 53:22,23 <b>company</b> 1:3 3:19 8:8,11 9:12,14 10:2,3 13:9,18 20:25 31:9 <b>complaint</b> 4:22 4:23 5:2,3 11:13 12:4,9 12:10,13 19:11 40:4,10,11,15 40:17 68:8,9 <b>complaints</b> 4:19 <b>completely</b> 45:5 <b>computer</b> 8:24 11:20 29:23,25 30:3,5,7 <b>concern</b> 36:22 <b>concluded</b> 67:14 <b>conducted</b> 49:25 <b>confirmations</b> 54:19 <b>confirming</b> 52:7 <b>connection</b> 3:22 <b>contact</b> 22:14 22:15,16,22	<b>contained</b> 60:19 <b>contents</b> 45:10 <b>context</b> 29:6 <b>contract</b> 9:19 48:9,13 <b>contractual</b> 52:9 <b>conversation</b> 27:22 <b>conversations</b> 29:6,12 <b>converted</b> 37:15 <b>coordinator</b> 21:8 23:7 <b>copy</b> 15:22 16:19 17:23 26:4,6 30:25 33:25 40:21 55:15 67:11 <b>correct</b> 16:9 21:14,14 22:20 30:12 38:16 46:25 49:10,14 50:11 53:15 55:15 57:16,22 61:5 62:11,12 62:16,17,21,23 66:24 <b>correctly</b> 44:25 <b>corresponde...</b> 40:11,16 43:10	<b>corresponde...</b> 36:9 <b>counsel</b> 3:18 52:23 <b>county</b> 70:5 <b>couple</b> 60:12 <b>course</b> 13:4 <b>court</b> 1:2 5:20 41:23 <b>cover</b> 40:16 43:9 <b>covid</b> 48:10 <b>credential</b> 8:13 8:17 <b>crossed</b> 52:25 <b>crr</b> 1:18 70:8 70:24 <b>cs7022807</b> 1:25 <b>current</b> 31:8 56:13 <b>currently</b> 9:2 48:15 <b>cut</b> 34:24 59:21 <b>cv</b> 1:6  <b>d</b>  <b>d</b> 3:1,2,2 4:1 5:1 6:1 7:1 8:1 9:1 10:1 11:1 12:1 13:1 14:1 15:1 16:1 17:1 18:1 19:1 20:1 21:1 22:1 23:1 24:1 25:1 26:1	27:1 28:1 29:1 30:1 31:1 32:1 33:1 34:1 35:1 36:1 37:1 38:1 39:1 40:1 41:1 42:1 43:1 44:1 45:1 46:1 47:1 48:1 49:1 50:1 51:1 52:1 53:1 54:1 55:1 56:1 57:1 58:1 59:1 60:1 61:1 62:1 63:1 64:1 65:1 66:1 67:1 69:2 <b>daily</b> 63:21 <b>damaged</b> 30:4 30:6 <b>damages</b> 30:9 36:18 <b>date</b> 1:10 5:4 26:13,22 35:12 38:10 42:3 46:17 55:5 56:8 57:17 59:4 60:20 <b>dated</b> 25:15,19 42:7 46:15,19 53:19 57:15,21 60:13,14 68:16 <b>dates</b> 34:22 <b>dave</b> 41:10 <b>david</b> 1:16 3:10 25:5 37:22 43:4 44:7
---	---	--	---

**[day - examination]**

Page 5

<b>day</b> 10:12 14:21 20:14 61:19 67:9 70:21 <b>dealing</b> 65:23 <b>defendant</b> 1:8 1:15 2:9 4:9 <b>define</b> 61:3 <b>definitely</b> 44:22 45:13 <b>depends</b> 32:12 <b>deposed</b> 5:6 <b>deposition</b> 1:14 7:7,13,21 8:2 <b>describe</b> 9:16 9:24 10:11,22 58:8 59:22 <b>description</b> 68:7 <b>detail</b> 26:15 <b>dickie</b> 2:8 <b>different</b> 6:24 11:13 12:4,8 29:20 30:9 59:14 <b>direct</b> 18:21 22:14,15,16 52:6 55:18 <b>directing</b> 44:4 <b>directly</b> 16:14 43:17 51:8 <b>disappeared</b> 60:6	<b>discover</b> 45:8 45:21 <b>discovered</b> 43:11 <b>discussing</b> 36:8 <b>discussions</b> 44:17 <b>district</b> 1:2,2 <b>document</b> 6:20 6:21,23 24:17 35:3 55:6,10 56:9 <b>documented</b> 18:23 <b>documents</b> 6:17,18 8:5,21 69:10,12 <b>doing</b> 5:19 <b>drawn</b> 45:12 <b>drive</b> 2:5,9 47:6 <b>dropped</b> 11:13 <b>due</b> 36:24 <b>duly</b> 3:3 70:12 <b>duties</b> 10:13	<b>effect</b> 35:19 <b>either</b> 22:11 28:2 59:11 <b>elaborate</b> 12:7 39:9 <b>elderly</b> 65:19 65:23,24 <b>electronic</b> 63:8 <b>email</b> 6:15 15:19 16:17 20:14 21:11,16 24:10,25 25:4 25:9,10,13,17 25:22 26:5 27:8,14,18,25 28:17 34:22 37:17,20 38:9 38:12,14,15,16 38:19,21,25 39:6,10,22 41:17 42:2,5 42:15,19,25 43:4,5,12,25 44:7,8,9,10,13 44:18,19,23 45:2,4,5,13,14 45:23,25 46:2 46:3,20 49:9 49:13 53:18,22 54:13,15 57:20 60:18,23 61:4 62:5,9 63:7,9 67:11 68:14,15	<b>emails</b> 7:9 24:6 24:20 25:14 26:11 28:7,11 28:18 37:12 39:18 45:17,19 46:8 50:2 63:18 68:10 <b>employed</b> 9:3 52:4 <b>employee</b> 19:21 19:25 20:13 30:11,13 52:8 66:3 <b>employee's</b> 40:8 <b>employees</b> 7:25 43:15 50:24 51:14,17 <b>en</b> 49:24 50:4 51:11,12 <b>entail</b> 10:13 <b>entire</b> 4:7 <b>especially</b> 5:16 <b>esq</b> 2:6,6,10 <b>estate</b> 4:2 15:9 15:10 38:3 53:10 <b>et</b> 4:4 38:5 <b>eventually</b> 63:6 <b>everybody</b> 18:16 39:17 67:9 <b>examination</b> 3:6 61:24
	<b>e</b> <b>e</b> 2:2,2 3:2 4:2 17:3 20:20 68:2 69:2 70:2 70:2 <b>earlier</b> 48:21 <b>eastern</b> 1:2 <b>easy</b> 5:22		

[examination - guys]

Page 6

64:16 67:13 69:4 70:11,13 <b>examined</b> 3:5 <b>exchanged</b> 28:7 <b>excuse</b> 18:7 57:17 <b>exhibit</b> 4:24,25 18:12,20,21 25:3 26:9,10 35:8,9 38:7,8 41:22,23,25 42:18 46:13,14 53:19 54:25 55:2,3 56:4,6 60:9,10 64:22 68:6,6 <b>exhibits</b> 68:4 <b>existence</b> 62:10 <b>experience</b> 11:12,23 13:15 <b>extent</b> 33:3	<b>fast</b> 6:4 <b>fastened</b> 29:23 <b>feedback</b> 10:9 <b>feel</b> 4:16 6:9,22 6:24 <b>figured</b> 48:10 <b>file</b> 21:20,21 <b>filed</b> 12:6 <b>files</b> 34:7 <b>fill</b> 58:16 <b>filled</b> 55:24 <b>find</b> 23:20 39:13,18 <b>fine</b> 31:12 41:9 64:11 <b>finish</b> 6:11 <b>firm</b> 58:12 <b>firms</b> 57:5 <b>first</b> 3:3 5:12 9:10 14:25 38:24 45:20 49:5,13 52:2 53:12 54:20 59:5 <b>five</b> 19:10 23:17 41:7 <b>flipping</b> 60:17 <b>floor</b> 2:5 30:4 47:6 <b>folder</b> 24:22 <b>follow</b> 61:22 <b>following</b> 18:24 <b>follows</b> 3:5	<b>forget</b> 5:22 <b>forgive</b> 59:6 <b>forgot</b> 27:25 <b>form</b> 61:2 <b>formed</b> 59:9 <b>forth</b> 70:12 <b>forward</b> 24:4 <b>forwarded</b> 24:9 24:12 48:2,14 48:17 <b>forwards</b> 24:15 <b>found</b> 28:13,14 33:10 50:20 54:14 <b>founded</b> 9:14 <b>founding</b> 13:8 <b>fourth</b> 4:21 5:2 68:8 <b>free</b> 4:16 6:9,22 6:24 <b>freedom</b> 47:14 <b>frequently</b> 29:19 <b>front</b> 8:5,21 <b>function</b> 6:16 <b>further</b> 70:15	66:13 <b>getting</b> 10:8 <b>gilbride</b> 2:6 3:18 10:4 42:8 <b>give</b> 5:18 <b>given</b> 28:18 70:14 <b>go</b> 4:18 5:8 18:15,24 20:8 20:9 35:4 37:12 60:7,8 64:20 65:11 <b>going</b> 7:22 14:23 19:10 20:8,9 24:16 24:16 35:3,22 36:15 37:11 41:2,5,9,14,14 41:16 42:20 46:10 50:17,19 51:23 54:23 56:3,15 57:25 60:5 64:8 65:10 <b>gong</b> 64:19 <b>good</b> 3:14,14 3:16 41:11,12 58:3 67:8 <b>great</b> 41:24 <b>ground</b> 5:10 <b>guess</b> 12:5 58:15 <b>guys</b> 28:19
<b>f</b>			
<b>f</b> 70:2 <b>facility</b> 30:25 32:8,10 34:8 58:22 <b>fact</b> 17:5 43:7 61:12 65:4 <b>fall</b> 19:14 52:6 <b>fallen</b> 33:9,10 <b>far</b> 27:19 <b>farther</b> 25:17	<b>flipping</b> 60:17 <b>floor</b> 2:5 30:4 47:6 <b>folder</b> 24:22 <b>follow</b> 61:22 <b>following</b> 18:24 <b>follows</b> 3:5	<b>generally</b> 31:7 31:14,20 32:5 43:22 <b>gentlemen</b> 11:2 <b>geraldine</b> 4:2 15:9 38:3	
		<b>g</b>	

[h - issues]

Page 7

<b>h</b>	<b>highlighting</b> 51:24	<b>ignore</b> 37:16 41:17 44:9	36:24
<b>h</b> 3:2,13 17:3 68:2	<b>hire</b> 9:18	<b>ignored</b> 44:14	<b>injury</b> 20:11 21:24 22:4
<b>hand</b> 26:22 70:21	<b>hiring</b> 10:15	<b>important</b> 5:17	24:2 30:19,20 30:23 31:15 33:3
<b>handled</b> 10:23 11:11,22	<b>hit</b> 19:7 30:4	<b>inbox</b> 38:22,22 60:23 61:5 62:8 63:19	<b>insurance</b> 1:3 3:19,21 10:21 10:22 31:9 42:6 43:16 49:17 55:4,7 55:15,21,25 56:12,24 68:18
<b>happened</b> 20:11 32:10	<b>hmm</b> 13:6 16:6 46:21	<b>incident</b> 15:24 31:2,14,16 32:8,15 33:25 34:7,12,16 35:16,19 39:19 54:16	<b>insured</b> 43:7
<b>hard</b> 10:5	<b>holes</b> 58:14,14 58:16	<b>included</b> 43:9	<b>interested</b> 70:18
<b>harrisburg</b> 2:10	<b>holland</b> 14:13 48:18	<b>includes</b> 4:21	<b>interstate</b> 2:9
<b>head</b> 5:19,24 19:7	<b>home</b> 13:10 15:19 16:11 22:9,11 45:17 58:21 60:2,2 65:20	<b>including</b> 15:9 37:24	<b>investigate</b> 23:25 33:20
<b>hear</b> 5:21 6:6 10:5 19:22 64:4	<b>homes</b> 9:19 34:5	<b>indemnificati...</b> 36:18	<b>investigated</b> 17:22
<b>heard</b> 29:12	<b>honest</b> 52:16	<b>individually</b> 3:25 38:2	<b>investigating</b> 52:14
<b>held</b> 1:17	<b>hopped</b> 30:3	<b>inform</b> 51:17	<b>investigation</b> 52:3
<b>help</b> 6:21 9:21 10:14,15,15,16 10:17 58:16	<b>horrified</b> 39:24	<b>information</b> 16:15 23:21 31:21 32:2 51:15 69:10,12	<b>invoke</b> 36:23
<b>helps</b> 8:13,17	<b>housekeeping</b> 5:9	<b>informed</b> 33:13	<b>involved</b> 15:23 55:20
<b>hereinbefore</b> 70:12	<b>hr</b> 16:5,14 24:8	<b>informing</b> 15:21 16:18	<b>involvement</b> 24:2 52:6,14
<b>hereunto</b> 70:20	<b>human</b> 8:12	<b>injured</b> 20:6 31:23 32:6 65:15 66:16	<b>issue</b> 11:6 55:16 56:13
<b>hershey</b> 22:8 22:12	<b>hump</b> 29:24	<b>injuries</b> 30:10 30:11,13,14,16	<b>issues</b> 19:5 31:17
<b>highlight</b> 42:21	<b>i</b>		
<b>highlighted</b> 42:24 44:5 52:2	<b>identification</b> 5:4 26:12 35:11 38:9 42:3 46:16 55:5 56:8		



## [january - lpns]

Page 8

<b>j</b>	<b>king</b> 38:2 47:7 47:10,12,21	14:4 50:7,9,25	49:17,19
<b>january</b> 37:22 43:10 46:15,19 53:17,20,24 54:6 57:21 60:20,22 62:7 63:7 68:16	<b>knew</b> 65:14,18 66:7	<b>land</b> 55:17	<b>likely</b> 20:13 65:6
<b>jason</b> 11:3	<b>knocked</b> 29:25	<b>landmark</b> 1:3 3:19,20 12:6 13:2 42:10	<b>linda</b> 42:25 43:6 44:8 49:10
<b>jenny</b> 22:25	<b>know</b> 3:17 5:22 5:23 6:2,5,7,21 8:9 14:20 17:18 18:10 20:23,23 21:3 21:4,18 22:21 23:2,5,15,18 24:13 27:16,19 27:21 28:6,20 30:15,17 33:23 34:2 38:23 40:23 41:5,21 44:12 45:15,16 48:8 51:13 59:3 66:2	<b>law</b> 43:3	<b>lindaridenba...</b> 37:21
<b>jmg</b> 1:6	<b>knowledge</b> 62:10,13,18 63:15	<b>lawsuit</b> 3:23,23 11:25 12:24 13:3,5,17,19 17:25 29:3 43:8 62:14	<b>line</b> 6:8 25:5 37:25 42:13 45:19 69:17
<b>joan</b> 2:6 42:8	<b>known</b> 45:10 66:9,11	<b>lawsuits</b> 11:10 11:22 13:16	<b>list</b> 45:18
<b>job</b> 1:25		<b>lawyer</b> 16:22	<b>little</b> 10:4,8 33:11
<b>joinder</b> 4:8,22 5:3 19:11 68:9		<b>leave</b> 47:24 48:6	<b>llc</b> 1:7,15 4:4 52:5
<b>jotted</b> 27:23		<b>left</b> 19:3 66:8 66:12	<b>llp</b> 2:4
<b>k</b>		<b>legal</b> 52:23	<b>location</b> 22:7
<b>kas</b> 25:7		<b>letter</b> 40:16,21 43:9 46:12,15 46:18 47:5,16 49:3,6,9,12,16 49:21,22 51:23 51:25 53:16 60:20 68:16	<b>long</b> 59:17
<b>kaster</b> 2:10 3:15 4:21 7:10 7:15,22 24:20 41:9 55:13 60:25 61:21,25 66:25 67:10 69:6		<b>letting</b> 41:21 42:20	<b>longer</b> 20:24 58:3
<b>kaufman</b> 2:4		<b>liability</b> 36:18 55:7 56:24 57:3 66:22	<b>look</b> 6:18,19
<b>keep</b> 14:19,20 37:9 41:14,14	<b>l</b> 3:2,2,24 17:3 17:3 20:20,20 37:25	<b>liberty</b> 10:25 11:7,8 42:6,12 43:16,22 44:17	<b>looking</b> 33:6
<b>kept</b> 21:19	<b>lag</b> 11:19		<b>looks</b> 25:15 45:25
<b>kimberly</b> 17:9 17:15 27:8,9 27:13,20 37:24	<b>lake</b> 2:5		<b>lori</b> 15:19 16:8 16:10,13,18 27:24 28:6 29:7
<b>kind</b> 31:11 32:9 53:23	<b>lancaster</b> 12:11 12:18 13:23		<b>lost</b> 19:6
			<b>lpns</b> 9:18

[m - notified]

Page 9

<b>m</b>	<b>matters</b> 8:9	<b>minute</b> 54:23	<b>name</b> 3:8 16:8
<b>m</b> 3:13	<b>mccamey</b> 2:8	<b>minutes</b> 41:6	17:2 20:19
<b>made</b> 3:22 57:4	<b>mcdownell</b>	64:7	22:25 37:14,16
<b>mail</b> 47:16,18	19:13 25:5,18	<b>miscellaneous</b>	40:8 41:18
48:2,3,13	28:21 52:4,7	56:23	44:14 45:11
<b>make</b> 16:20	52:11,15 62:25	<b>missed</b> 44:20	<b>named</b> 4:9
44:24 58:19	64:24 66:3,12	45:2	12:24 13:20
62:2	<b>mcdownell's</b>	<b>missy</b> 20:19,24	15:6,13
<b>making</b> 63:23	23:25 26:16	21:2 22:7	<b>necessary</b>
<b>manager</b> 20:15	32:18	<b>missy's</b> 21:6	32:22
20:18	<b>mean</b> 12:3,8	<b>mistake</b> 51:24	<b>need</b> 6:5,8,25
<b>march</b> 59:9,11	17:20 27:23	<b>mm</b> 13:6 16:6	9:22 41:10
<b>marissa</b> 15:18	28:15,17 29:8	46:21	<b>needed</b> 28:24
16:20,23 27:19	30:15,17 33:5	<b>mohnton</b> 3:12	<b>never</b> 44:15
27:24 28:6	45:7,9 52:24	<b>moment</b> 41:3	<b>new</b> 1:19 2:5
29:5	54:17 57:9	60:7	3:4 14:13 45:4
<b>marissa's</b> 16:17	<b>med</b> 29:23 30:3	<b>months</b> 57:3	48:18 70:4,9
<b>mark</b> 4:19 25:3	<b>medical</b> 23:14	<b>moriarty</b> 2:6	<b>nicole</b> 1:17 70:8
35:8 38:6	56:24	3:7 7:17 10:6	70:24
41:19 42:18	<b>medication</b>	41:4,13,19,24	<b>nine</b> 59:20,20
46:12 54:25	5:13	42:4 57:23	<b>nod</b> 5:24
<b>marked</b> 4:24	<b>meet</b> 52:11	61:23 62:22	<b>nods</b> 5:19
5:3 18:12	<b>melissa</b> 25:18	64:3,6,13,17	<b>notary</b> 1:18 3:4
26:12 35:11,24	<b>member</b> 31:24	67:3,8 69:5,7	70:8
38:9 42:2	<b>mentioned</b> 12:5	<b>morning</b> 3:14	<b>note</b> 18:23
46:16 55:4	13:22 14:24	3:15,16	<b>notes</b> 57:25
56:7 69:15	16:4 33:12	<b>move</b> 23:22	64:8
<b>marketing</b>	54:3,4,12	24:14	<b>notice</b> 61:10
10:15	59:14	<b>moving</b> 14:19	63:9
<b>marriage</b> 70:17	<b>met</b> 7:23	37:10	<b>notices</b> 11:10
<b>matter</b> 43:6	<b>mind</b> 41:21	<b>n</b>	11:21
70:19	52:25 61:8	<b>n</b> 2:2 3:13,13	<b>notified</b> 20:3
	64:4	15:24,24 69:2	20:10 51:11

[november - part]

Page 10

<b>november</b> 1:10 70:21 <b>number</b> 18:22 41:22 57:2 68:7 <b>nurse</b> 9:20,21 29:24 32:2 58:15 66:10 <b>nurseselect</b> 1:7 1:15 3:22 4:4,8 7:25 9:5,8,17 9:25 10:12,23 11:11,22 12:15 12:20,24 13:8 13:23 14:7,15 15:6 16:14 20:10,21 21:6 22:3 23:10,24 24:9 25:2 26:11,21,21,24 27:17 28:10,14 29:16 31:13,20 31:24 32:4,5 33:20 34:6,16 35:7 36:4 37:23 42:14 46:22,24 47:3 47:9,12,15,20 47:24 48:6 50:23 52:5,8 52:10 53:13 55:22 58:10,25 59:8,15,25 62:20 63:4	66:3,23 68:11 <b>nurses</b> 8:14,18 21:9 22:19 23:13 <b>nursing</b> 9:19 15:19 16:11 26:18 29:17 34:4 58:21 65:20	50:6,7,9,25 52:10 <b>officer</b> 13:14 <b>offices</b> 14:7,16 <b>oh</b> 8:19 9:14 10:2 13:4 15:16 26:23 31:12 40:23 44:22 48:20	<b>ongoing</b> 29:3 53:9 <b>open</b> 43:5 44:8 46:2,2,7 <b>opened</b> 22:10 45:13,18 46:4 46:5 48:10 49:13 63:11,17 <b>opening</b> 39:7 45:22 <b>operating</b> 13:13 <b>order</b> 67:10 <b>outcome</b> 70:18 <b>outgoing</b> 16:17 <b>owner</b> 13:13
	<b>o</b>	<b>okay</b> 4:14 8:19 8:25 10:11 11:8,21 12:2 12:17,23 14:9 14:18 15:14 16:4,7,13,21,23 17:2,14,24 18:5,19 20:2,8 20:17 22:18 23:8,19 24:16 24:18 25:20 26:23 27:6 29:11 35:4 37:12 38:18 40:25 41:13,16 41:18,24 42:19 42:22 43:24 44:16 46:7 47:18 49:5 50:8,22 51:2 51:22,25 53:3 54:9,10,22,23 60:4,7,8 63:18 64:6,20 65:10	<b>p</b>
	<b>o</b> 3:13,13 <b>objection</b> 60:25 62:22 66:25 <b>obviously</b> 10:20 27:25 39:15,23 40:7 45:9 46:2 54:19 <b>occurred</b> 27:22 <b>october</b> 15:17 15:18 16:2,3 24:11,14,15 25:15,16 28:3 28:16 34:22 42:7 <b>octoberish</b> 15:17 <b>offhand</b> 59:3 <b>office</b> 11:13 12:4,8,11,18 13:24 14:2,11 22:8,11,12 40:19 47:3,10		<b>p</b> 2:2,2 <b>page</b> 18:21 19:10 25:17 27:7 35:24,24 36:16 37:19 56:16,17,18 64:22,23 68:6 69:4,12,17 <b>panic</b> 39:16 <b>paragraph</b> 18:22 19:12 52:3 57:13 <b>paralegal</b> 43:2 <b>part</b> 6:20 8:7 56:22

[particular - quinn]

Page 11

<b>particular</b> 6:20 6:21 11:24 39:19 <b>parties</b> 1:17 6:14 70:16 <b>party</b> 4:9 12:25 13:20 <b>past</b> 57:2 <b>patient</b> 18:25 19:4,5 30:14 30:16,19,20,23 31:15,23 32:6 33:16 65:15,19 65:24 <b>payroll</b> 10:17 <b>pc</b> 2:8 <b>pdf</b> 18:20 19:10 25:17 27:7 35:23 37:15,19 56:16,17,17,17 64:22,23 <b>pending</b> 6:10 62:14 <b>pennsylvania</b> 1:2 2:10 3:13 10:25 47:7 <b>people</b> 37:24 <b>perform</b> 28:10 40:2 <b>period</b> 55:19 <b>person</b> 51:19 <b>personal</b> 52:22 <b>phone</b> 27:20 31:23 36:12	53:22 <b>physical</b> 40:21 48:4,5,7 <b>physically</b> 40:18 <b>pick</b> 49:25 <b>picture</b> 30:6 <b>pittsburgh</b> 10:25 <b>place</b> 54:20 <b>plaintiff</b> 1:4 2:4 <b>plaintiff's</b> 4:25 26:10 35:9 38:8 41:25 46:14 55:3 56:6 68:4 <b>plan</b> 33:16,21 <b>please</b> 3:8 <b>point</b> 15:12 17:25 18:6 19:20,24 21:17 31:6,7 36:17 41:7 43:18 49:3 50:25 51:21 53:4,4 57:24 65:15,22 66:16 <b>policy</b> 55:4,15 55:19,21 56:5 56:7,12,13 60:10,22 68:18 68:19 <b>popped</b> 39:22	<b>portion</b> 42:24 44:5 52:2 <b>portions</b> 6:24 <b>possible</b> 63:4 67:11 <b>predecessor</b> 57:5 <b>preparation</b> 7:20 <b>prepare</b> 7:6,12 8:2 <b>present</b> 61:4,12 61:13 62:8 <b>president</b> 9:7 9:25 10:12 <b>pretty</b> 11:4 <b>previously</b> 6:15 <b>prior</b> 13:7 27:14,18 31:10 39:7 51:9 53:7 <b>pro</b> 13:10 <b>probably</b> 3:17 <b>produced</b> 25:2 26:11 68:10 <b>professional</b> 55:7 56:24 57:3 <b>progress</b> 18:23 <b>provide</b> 13:25 <b>provided</b> 34:4 60:2 <b>provision</b> 36:20 36:24	<b>prussia</b> 47:7,10 47:13,21 <b>public</b> 1:18 3:4 70:9 <b>published</b> 28:18 <b>pull</b> 18:10 23:20 24:17 35:3 37:11 41:2,16 54:24 56:4 57:21 60:5 <b>pulled</b> 33:7 64:21 <b>pulling</b> 18:11 18:13 24:19,21 35:5 42:4 53:18 60:9,10 <b>put</b> 21:19,21 48:20
<b>q</b>			
<b>question</b> 6:3,10 11:17 19:15 31:11 32:3 40:13 57:2,8 61:2 69:17 <b>questions</b> 3:21 4:15 5:14 61:22 63:25 64:18 69:15 <b>quickly</b> 55:9 <b>quinn</b> 3:24			



[r - return]

Page 12

<b>r</b>	<b>receipt</b> 63:8,14	<b>refer</b> 3:20 4:5,7	<b>remind</b> 5:23
<b>r</b> 2:2 20:20 70:2	<b>receipts</b> 63:14	35:7 48:23	<b>renewal</b> 56:23
<b>ran</b> 54:3	<b>receive</b> 29:17	<b>reference</b> 30:19	<b>repeat</b> 8:16
<b>reach</b> 15:10	30:22 34:19	<b>referencing</b>	11:17 31:10
21:23 22:2	47:16 49:3	43:9	40:12
30:24 32:7	53:21	<b>referring</b> 4:6,8	<b>repeating</b> 61:8
58:16	<b>received</b> 20:12	4:15 12:13	<b>rephrase</b> 6:4
<b>reached</b> 15:21	20:13 21:10	24:15 25:23	29:14 31:19
16:14,19 19:18	29:22 30:8,18	27:10 45:22	32:3 36:7 51:6
27:24 33:24,24	33:3,22 44:23	<b>refrain</b> 5:19	<b>report</b> 30:19,22
<b>reaching</b> 31:25	51:19 60:23	<b>refresh</b> 6:22	31:2,9,22 32:9
<b>read</b> 21:17 27:3	61:3 64:25	<b>regarding</b>	34:2,7,12,16
39:10 44:5	<b>receiving</b> 21:15	10:21 21:24	<b>reporter</b> 5:20
49:6,12,20,22	31:14,21 32:17	28:7 30:9,22	30:2 41:23
51:17,20 57:20	44:13 51:3	44:17,19 54:16	<b>reports</b> 31:4,15
63:2 65:4	<b>recently</b> 48:14	<b>regardless</b> 62:4	31:17
<b>reading</b> 14:12	<b>recess</b> 58:5	62:7	<b>represent</b>
14:14 43:25	64:14	<b>regular</b> 38:22	42:10 55:12
48:19,24 49:2	<b>recliner</b> 19:6	47:18	<b>representation</b>
49:15,23 50:6	<b>recognize</b> 25:8	<b>regus</b> 48:9,11	57:13
62:25 66:6,20	42:15 44:11	<b>rehabilitation</b>	<b>representing</b>
<b>reads</b> 42:24	55:10 56:9,11	4:3 38:4	17:15
<b>reason</b> 32:16	<b>recognized</b>	<b>reidenbaugh</b>	<b>request</b> 9:20
37:4 46:5	45:11	43:2,6 44:8	<b>requested</b>
<b>reasons</b> 29:20	<b>recognizing</b>	49:10 62:6	69:10
29:21	43:3 44:6	<b>reilly</b> 20:19	<b>resident</b> 33:7,9
<b>recall</b> 27:15	<b>recollection</b>	25:18	33:10,11
29:11 36:10	6:22	<b>related</b> 70:16	<b>resources</b> 8:13
38:11 40:24	<b>record</b> 3:9,24	<b>relation</b> 32:20	<b>respective</b> 1:16
43:24 44:12,16	24:21 48:21	<b>relationship</b>	<b>responsibilities</b>
44:25 54:14	49:8 70:13	52:17,19 58:9	9:24
57:7,9 61:6	<b>recruiting</b>	58:25 59:5	<b>result</b> 66:22
65:6	10:16	<b>relevant</b> 52:5	<b>return</b> 63:13,14

[revealed - sent]

Page 13

<b>revealed</b> 52:3	65:2,16,19	43:2 52:12,17	<b>search</b> 39:16,17
<b>review</b> 34:17	66:4,8,23 67:3	52:21,25 53:23	40:2,5 50:2
57:25 64:8	<b>rns</b> 9:18	<b>saxtonstump....</b>	51:9,14 54:3
<b>reviewed</b> 7:8	<b>road</b> 3:12	37:21	<b>searched</b> 39:17
<b>reviewing</b> 31:4	48:18	<b>saxtonstump....</b>	45:5
51:10 52:9	<b>role</b> 8:10 13:11	25:7	<b>searches</b> 28:11
<b>right</b> 4:14,18	21:6 23:4	<b>saying</b> 63:10	54:13,15
5:5,8,16 6:13	26:17	<b>says</b> 18:23	<b>see</b> 18:16 25:4
7:4,11,24 8:4	<b>rolling</b> 19:7	32:13 35:6	32:19,22 35:4
8:19,25 9:8,10	<b>room</b> 29:9 33:8	37:17,20 44:6	37:4,13 38:18
9:23 10:18,20	66:12	57:2	38:24 39:3,6
12:18 13:22	<b>route</b> 49:25	<b>scan</b> 25:4	39:24 45:3,18
14:6,15,22	50:5,5 51:11	<b>schedule</b> 58:14	45:25 46:3
15:8 16:5	51:12	58:15	51:14 61:9
17:10 18:8,16	<b>rpr</b> 1:18 70:8	<b>scheduling</b>	<b>seeing</b> 45:24
18:19 19:12	70:24	10:17	61:6
22:10 23:22	<b>rsui</b> 42:9,10	<b>schoener</b> 15:19	<b>seen</b> 38:14,15
24:13,19 25:12	<b>rules</b> 5:10	16:8,10,13,18	54:17 65:12
26:8,14 30:8	<b>rulings</b> 69:15	29:7	<b>selemba</b> 27:8
34:19 35:2,22	<b>run</b> 10:2 40:6	<b>screen</b> 6:16,19	27:14 28:20,23
36:15 37:7,9	54:13	18:13,17 24:18	29:2,7 36:8,10
37:14,16,19	<b>running</b> 51:9	45:18 46:24	37:24
40:20,25 41:15	<b>runs</b> 16:5	60:8 64:20	<b>selly</b> 43:11
41:17 42:17,18	<b>ryan</b> 2:4	<b>scroll</b> 19:9,10	<b>send</b> 9:20
44:3 46:10,11	<b>s</b>	25:13 27:6	<b>sender</b> 43:4
46:18 48:16	<b>s</b> 2:2 3:2 17:3	32:23 35:23	44:6,11
51:22 53:7	68:2	36:16 37:18	<b>sending</b> 27:14
54:11 55:16	<b>sarah</b> 2:6	53:17 55:8	<b>sense</b> 58:19
56:3,15,25	<b>saw</b> 44:14,15	56:16,21	<b>sent</b> 4:20 7:9
57:23 58:7,24	45:2,9	<b>scrolling</b> 18:20	15:18 16:21
59:6,13 60:4,9	<b>saxton</b> 17:8,9	25:16 27:7	17:5,7 24:22
60:11,24 61:15	17:11,15 27:10	37:19 42:19	26:6 30:5
61:15,23 63:24	27:18 36:8	56:25	37:21 42:7,25
64:3,10,13,21			62:6 66:9

[sentence - statement]

Page 14

<b>sentence</b> 65:12	26:1 27:1 28:1	<b>sit</b> 19:6 66:19	<b>staffing</b> 20:14
<b>sentences</b> 18:25	29:1 30:1 31:1	<b>six</b> 36:16	20:17 21:8
<b>september</b>	32:1 33:1 34:1	<b>slipped</b> 28:16	22:19 23:6
12:22 15:3	35:1,13 36:1	<b>slow</b> 6:5	35:6,10,14,18
39:2,7,11,14	37:1,22 38:1	<b>solely</b> 37:6	36:11 37:23
43:8 49:7	38:11 39:1	<b>somewhat</b>	58:12,13 59:4
50:12 54:7	40:1 41:1 42:1	29:19,19	59:24 68:12
62:11,15,20	42:11 43:1,5	<b>sorry</b> 8:15	<b>stamped</b> 55:17
<b>served</b> 12:3,9	44:1,7 45:1	11:15,19 18:12	<b>standing</b> 18:25
12:10,20 13:20	46:1 47:1 48:1	19:22 31:10	<b>start</b> 9:11
13:23 14:24	49:1 50:1 51:1	34:23,25 37:18	26:20 59:8,10
40:3,9,14,18	52:1 53:1 54:1	40:12 41:2	65:11
43:8 50:10,18	55:1,9,20 56:1	43:13 51:5,24	<b>started</b> 5:10
50:20,21 53:6	57:1 58:1,7	53:4 56:17	9:12
53:7,14	59:1 60:1 61:1	59:21 60:5,6	<b>starting</b> 59:15
<b>services</b> 32:21	61:19 62:1,2	61:7 63:23	<b>stat</b> 13:10
60:3	63:1 64:1,19	64:6	<b>state</b> 1:19 3:4,8
<b>set</b> 61:16 70:12	65:1 66:1 67:1	<b>sound</b> 58:3	70:4,9
70:21	67:6	<b>space</b> 48:11	<b>statement</b>
<b>share</b> 6:16,23	<b>shift</b> 54:18	<b>speak</b> 6:25 7:11	15:22 16:20,21
18:13,15,15	<b>short</b> 58:5	7:19,24 10:8	17:5,7 19:19
24:17 60:8,8	64:14	11:3 27:13	19:21,25 20:15
64:19	<b>shortly</b> 65:7	43:17,21	20:22 21:11,16
<b>shared</b> 48:11	<b>show</b> 6:17	<b>specific</b> 39:4	21:19 24:4
<b>shelly</b> 1:16 3:1	54:21	<b>specifically</b>	25:22 26:3
3:10,14 4:1 5:1	<b>shown</b> 62:24	51:23	27:3 28:21
5:6 6:1 7:1 8:1	<b>sic</b> 43:11	<b>spoke</b> 27:20	30:5 31:2,22
9:1 10:1,7 11:1	<b>signature</b> 35:25	<b>ss</b> 70:4	32:9,12,18,20
12:1 13:1 14:1	56:19 57:12	<b>staff</b> 23:14	32:23 33:4,6
15:1 16:1 17:1	60:14 70:23	29:18 31:24	33:22 34:9,17
17:3 18:1 19:1	<b>signed</b> 60:21	39:25 51:8	36:13 37:7
19:16,23 20:1	<b>similar</b> 59:25	59:10	54:18 62:24
21:1 22:1 23:1	<b>sink</b> 19:2	<b>staffed</b> 21:9	63:2 64:23
24:1 25:1,6,8		22:7 23:10	66:7,21

## [statements - turning]

Page 15

<b>statements</b> 29:17 30:9 31:5 <b>states</b> 1:2 51:25 <b>stating</b> 55:6 <b>steps</b> 31:3 32:4 32:17 33:20 <b>steve</b> 11:3 <b>stipulated</b> 55:14 <b>stole</b> 54:20 <b>stump</b> 17:8,9 17:11,15 27:10 27:18 36:9 43:2 52:13,18 52:21,25 53:23 <b>subject</b> 25:5 37:25 42:13 45:19 <b>suffolk</b> 70:5 <b>sugar</b> 19:4 <b>suit</b> 12:6 49:23 49:25 50:10,17 50:19,22 51:3 51:10,12,17,20 51:21 53:7,8,9 57:4 <b>suite</b> 2:9 14:4 14:14 48:19 <b>summit</b> 2:5 <b>supervisor</b> 33:14 65:13 <b>supplemental</b> 35:5,10 58:11	58:12 68:12 <b>sure</b> 4:17 5:25 7:3,17 8:10 10:10,14 11:18 11:19 16:20 17:23 22:6 23:15 24:8 30:18,18 32:25 34:10 38:23 40:7,14 41:8 43:20,21 44:14 44:24 48:12,25 49:19 52:24 57:11 58:20 59:21 61:20 62:3 63:23 <b>switch</b> 46:11,11 <b>sworn</b> 3:3 70:12 <b>sycamore</b> 3:12 <b>t</b> <b>t</b> 3:13 68:2 70:2 70:2 <b>table</b> 19:8 <b>tabs</b> 60:6 <b>take</b> 6:11 10:19 11:4 19:3 23:24 31:3 32:5,17 33:20 41:7 57:24 64:7 <b>taken</b> 1:16 5:12 58:6 64:15	<b>talk</b> 6:4 11:2 <b>talked</b> 8:8 27:17 <b>talking</b> 27:15 48:3 62:5 <b>task</b> 42:21 <b>teeth</b> 19:2 <b>tell</b> 29:2 46:5 46:23 63:12 <b>ten</b> 57:25 <b>term</b> 4:7 <b>terms</b> 40:5 51:9 <b>testified</b> 3:5 <b>testimony</b> 70:14 <b>thank</b> 61:18,20 63:25 67:6,7 <b>thanks</b> 64:2 <b>things</b> 5:20 14:19 60:12 62:3 <b>think</b> 16:7 23:6 24:11 33:11 34:23 37:13 46:3 51:12 54:24 57:24 58:2 61:16,16 61:17 63:13,24 64:23 66:20 67:4,5 <b>third</b> 4:9 47:6 <b>thought</b> 32:20 <b>three</b> 25:17 37:19 64:23	<b>time</b> 1:11 17:12 17:19 19:14,17 22:6,9,10 23:11 24:5 29:9 35:16,17 35:19 38:13 47:13 52:5,18 53:12 61:18 64:9 <b>timeline</b> 50:15 <b>title</b> 21:7 26:17 35:5 <b>titled</b> 56:22 <b>today</b> 3:21 5:11 5:14,17 6:14 8:5,22 13:5 61:18 66:19 <b>today's</b> 7:7,12 7:20,25 <b>told</b> 44:22 65:13 <b>took</b> 29:24 54:20 <b>top</b> 19:12 35:6 40:22 41:18 <b>transcribe</b> 5:21 <b>true</b> 55:14 70:13 <b>try</b> 5:18 14:22 32:8 39:4 45:16 <b>turning</b> 42:23 55:16
--	---	--	--



[two - years]

Page 16

<b>two</b> 11:2 14:8,9 27:7 50:24 56:16,16,17,18 64:7 <b>type</b> 48:11 <b>typical</b> 10:12 <b>typically</b> 10:23 11:11,22 30:21 30:24 31:16 32:7 45:20	<b>undiscovered</b> 45:6 <b>united</b> 1:2 <b>unnoticed</b> 39:12 <b>unopened</b> 43:11 45:19 <b>unread</b> 39:22 <b>using</b> 6:16	<b>viola</b> 42:2,6 43:14,18 68:15 <b>virtual</b> 5:17 6:14 <b>visual</b> 18:11 32:24	<b>wills</b> 23:2,3,4 <b>wilson</b> 42:9 <b>witness</b> 1:15 3:3 10:10 41:8 41:11 58:4 61:20 64:5,11 67:7,13 70:11 70:14,20 <b>word</b> 4:5 61:3 <b>words</b> 45:20 <b>work</b> 10:24 11:14 13:7 21:2 59:11 <b>working</b> 9:11 17:13 22:11 26:20 <b>works</b> 8:12 <b>would've</b> 44:22 <b>wrap</b> 67:5 <b>written</b> 25:11
<b>u</b>	<b>v</b> 3:2	<b>w</b>	
<b>under</b> 57:12 <b>underlying</b> 3:23 4:6,20 12:14 14:23 15:2,5 17:25 18:9 28:8 34:21 <b>understand</b> 4:12 6:3 17:11 21:10,13 22:13 44:25 47:15 51:7 52:17,19 52:21 <b>understanding</b> 62:3 <b>understood</b> 17:14 24:24 26:8 28:4 33:15 45:15 51:22 58:18 61:11	<b>valhalla</b> 2:5 <b>veltri</b> 1:18 41:20 70:8,24 <b>verbal</b> 5:18 <b>versus</b> 4:2,4 12:14,15 38:3 42:13 45:3 <b>videoconfere...</b> 1:14 <b>village</b> 4:3,11 12:15 15:20 16:12 17:13,16 17:19 19:18 22:14,17,19,22 23:10 26:25 32:21 34:12 36:4,23 38:4 52:10,13,18,23 53:2,10 58:9 58:21 59:2 62:14,19	<b>walk</b> 19:5 <b>want</b> 6:19 7:2 14:20 41:6 62:2 <b>wanted</b> 16:20 17:23 60:11 <b>way</b> 4:16 70:18 <b>we've</b> 30:17 41:5 <b>week</b> 7:23 <b>wells</b> 23:2 <b>went</b> 31:11 39:12 <b>whereof</b> 70:20 <b>wife</b> 8:7 15:18 16:5,24 <b>wife's</b> 8:10 <b>wiggins</b> 4:2 12:14 15:9 18:3 19:12 20:5 24:2 28:7 32:15 33:17 34:20 36:25 38:3 42:13 53:10 54:16 66:8,13,15	<b>x</b> <b>x</b> 1:3,8 68:2 69:2 <b>y</b> <b>y</b> 3:2 15:24 17:3 20:20 <b>yeah</b> 7:23 12:3 13:17 28:15 33:12 39:21 44:23 62:17 <b>year</b> 15:25 <b>years</b> 59:19,20 59:20

[yesterday - zoom]

Page 17

<b>yesterday</b> 4:21 24:23 <b>york</b> 1:19 2:5 3:4 70:4,10 <b>yup</b> 58:4 64:12
<b>z</b>
<b>zach</b> 42:9 <b>zoom</b> 1:17 6:16 6:23 18:14

Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate.

The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS

COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

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**SAXTON & STUMP**

Collin T. Keyser, Esquire  
 Attorney I.D. No. 307505  
 Kimberly A. Selemba, Esquire  
 Attorney I.D. No. 93535  
 280 Granite Run Drive, Suite 300  
 Lancaster, PA 17601  
 Phone: (717) 556-1000  
[info@saxtonstump.com](mailto:info@saxtonstump.com)  
[www.saxtonstump.com](http://www.saxtonstump.com)

*Attorneys for Defendants: Rehabilitation Center  
 at Brethren Village, LLC, Brethren Village,  
 Brethren Village Realty, LLC, and Lori  
 Schoener, NHA*

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 Jun 13 2023 02:40PM  
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BRENDA L. KLING, individually and as  
 Administratrix of the Estate of  
 GERALDINE E. WIGGINS,  
 Plaintiff

v.

REHABILITATION CENTER AT  
 BRETHREN VILLAGE, LLC,  
 BRETHREN VILLAGE, BRETHREN  
 VILLAGE REALTY, LLC, LORI  
 SCHOENER, NHA, and JOHN DOUSI—

vs.

Defendants.

v.

NURSELECT, LLC,

Additional  
 Defendant.

IN THE COURT OF COMMON PLEAS  
 OF LANCASTER COUNTY,  
 PENNSYLVANIA

NO: CI-22-04128

MedMal

**NOTICE TO DEFEND**

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

**EXHIBIT**

1 11/20/24

No. CI-22-04128

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

Lancaster Bar Association  
Lawyer Referral Service  
Telephone: 717-393-0737

No. CI-22-04128

BRENDA L. KLING, individually and as : IN THE COURT OF COMMON PLEAS  
 Administratrix of the Estate of : OF LANCASTER COUNTY,  
 GERALDINE E. WIGGINS, : PENNSYLVANIA

Plaintiff

NO: CI-22-04128

v.

MedMal

REHABILITATION CENTER AT :  
 BRETHREN VILLAGE, LLC, :  
 BRETHREN VILLAGE, BRETHREN :  
 VILLAGE REALTY, LLC, LORI :  
 SCHOENER, NHA, and JOHN DOES1- :  
 4 :

Defendants,

v.

NURSELECT, LLC,

Additional :  
 Defendant. :

**JOINDER COMPLAINT OF DEFENDANT, BRETHREN VILLAGE, AGAINST  
ADDITIONAL DEFENDANT, NURSELECT, LLC**

Defendant, Brethren Village, ("Joining Defendant"), by and through counsel, Saxton & Stump, files this Third-Party Joinder Complaint against Additional Defendant, NurSelect, LLC ("Additional Defendant" or "NurSelect"), pursuant to Pennsylvania Rule of Civil Procedure 2252 and, in support thereof avers as follows:

1. Plaintiff, Brenda L. Kling, has filed a Complaint in this matter, asserting claims for negligence, vicarious liability, corporate negligence, survival, wrongful death, and breach of fiduciary duty, arising out of skilled nursing care provided to resident, Geraldine E. Wiggins ("Ms. Wiggins"), at Rehabilitation Center at Brethren Village, LLC ("Brethren Village"). A copy of Plaintiff's Fourth Amended Complaint is attached hereto, without adoption, as "Exhibit A."



No. CI-22-04128

2. In the Fourth Amended Complaint, Plaintiff alleges that Defendants were negligent in relation to a fall that Ms. Wiggins had as she attempted to walk from the bathroom to her chair.

3. Joining Defendant hereby incorporates the allegations of Plaintiff's Fourth Amended Complaint without admitting or denying the substance of those allegations.

**JOINDER DEFENDANT**

4. Additional Defendant NurSelect, LLC, is a health care employment agency with a principal place of business at 630 Freedom Business Center Drive, King of Prussia, PA, 19406.

5. At the time of the alleged incident, NurSelect provided supplemental staffing to Brethren Village, pursuant to a September 22, 2020 written contract titled "Supplemental Staffing Agreement". A copy of the Supplemental Staffing Agreement is attached hereto as "Exhibit B."

**FACTUAL BACKGROUND**

6. As set forth above, Joining Defendant incorporates by reference the allegations in Plaintiff's Fourth Amended Complaint, without admitting or denying the substance of those allegations.

7. Plaintiff claims that, on or about the morning of May 12, 2021, Ms. Wiggins fell while walking from her bathroom to her chair unattended, resulting in a laceration and a quarter-sized hematoma.

8. On August 28, 2021, Ms. Wiggins passed away; Plaintiff alleges that "failure to thrive" was listed as the cause of death. 4th Am. Compl. ¶ 61.

9. Plaintiff alleges that the injuries Ms. Wiggins suffered from her fall contributed to her death over 3-months later. 4th Am. Compl. ¶ 63.

No. CI-22-04128

10. Ms. Wiggins was in the care of Ayanna McDowell, CNA, at the time of her fall.

11. Ms. McDowell was employed as an agency nurse for NurSelect at the time of the incident. She was not employed by Brethren Village.

12. The obligations of Additional Defendant, NurSelect, LLC, under the aforementioned written Supplemental Staffing Agreement, include, but are not limited to, the timely provision of licensed and certified nursing personnel in accordance with federal, state, and local laws, rules ordinances and regulations and meeting the highest professional standards and principles. Exhibit B, at Arts. 1.1, 1.2.

13. The Agreement expressly provides that NurSelect personnel furnished to Brethren Village “shall not be considered employees or agents [Brethren Village] but instead shall be considered leased employees of NurSelect.” Exhibit B, at Art 3.1.

14. Pursuant to the Supplemental Staffing Agreement, NurSelect agreed to “indemnify and hold harmless [Brethren Village] from and against any and all claims, demands, actions, settlements, or judgments, including reasonable attorneys’ fees and litigation expenses, arising from. . . NurSelect Personnel’s provision of the Services where such claims, demands actions, settlements, or judgments arise from the negligence or willful misconduct of NurSelect Personnel.” Exhibit B, at Art. 5.2.

**COUNT I**  
**NEGLIGENCE, INDEMNIFICATION AND CONTRIBUTION**

15. The foregoing paragraphs are incorporated herein by reference as if set forth herein at length.

16. Without admitting the averments of Plaintiff’s Fourth Amended Complaint, Additional Defendant, NurSelect, LLC, is solely liable to Plaintiff, jointly and severally liable with Joining Defendant, liable over Joining Defendant, or liable to Joining Defendant for



No. CI-22-04128

indemnification and/or contribution, for the claims asserted by Plaintiff, Brenda L. Kling, and for the injuries and damages alleged in the 4<sup>th</sup> Amended Complaint.

**WHEREFORE**, Joining Defendant Brethren Village demands judgment in its favor and against Additional Defendant, NurSelect, LLC. In the alternative, Joining Defendant Brethren Village demands that Additional Defendant, NurSelect, LLC, be held solely liable to Plaintiff, jointly and severally liable with Joining Defendant, liable over Joining Defendant, or liable to Joining Defendant for common law and contractual indemnification and/or contribution.

**COUNT II**  
**VICARIOUS LIABILITY, INDEMNIFICATION, AND CONTRIBUTION**

17. The foregoing paragraphs are incorporated herein by reference as if set forth herein at length.

18. Without admitting the averments of Plaintiff's Fourth Amended Complaint, Additional Defendant, NurSelect, LLC, as the employer/principal of Ayanna McDowell, is vicariously liable to Plaintiff, jointly and severally liable with Joining Defendant, liable over Joining Defendant, or liable to Joining Defendant for indemnification and/or contribution, for the claims asserted by Plaintiff, Brenda L. Kling, and for the injuries and damages alleged in the 4<sup>th</sup> Amended Complaint.

**WHEREFORE**, Joining Defendant Brethren Village demands judgment in its favor and against Additional Defendant, NurSelect, LLC. In the alternative, Joining Defendant Brethren Village demands that Additional Defendant, NurSelect, LLC, be held vicariously liable to Plaintiff, jointly and severally liable with Joining Defendant, liable over Joining Defendant, or liable to Joining Defendant for indemnification and/or contribution.

No. CI-22-04128

**COUNT III**  
**CONTRACTUAL INDEMNIFICATION**

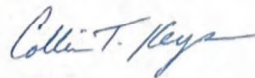
19. The foregoing paragraphs are incorporated herein by reference as if set forth herein at length.

20. Without admitting the averments of Plaintiff's Fourth Amended Complaint, Additional Defendant, NurSelect, LLC, pursuant to the Supplemental Staffing Agreement, is contractually obligated to indemnify and hold harmless Joining Defendant for any liabilities, damages, and expenses resulting from the claims asserted by Plaintiff.

**WHEREFORE**, Joining Defendant Brethren Village demands judgment in its favor and against Additional Defendant, NurSelect, LLC. In the alternative, Joining Defendant Brethren Village demands that Additional Defendant, NurSelect, LLC, be held contractually liable for indemnification for any liabilities, damages, and expenses resulting from the claims asserted by Plaintiff.

Respectfully submitted,

SAXTON & STUMP



Date: June 13, 2023

By: \_\_\_\_\_

Collin T. Keyser, Esquire  
Attorney I.D. No. 307505  
Kimberly A. Selemba, Esquire  
Attorney I.D. No. 93535  
280 Granite Run Drive, Suite 300  
Lancaster, PA 17601



No. CI-22-04128

Phone: (717) 556-1000

Fax: (717) 441-3810

[ctk@saxtonstump.com](mailto:ctk@saxtonstump.com)

[kas@saxtonstump.com](mailto:kas@saxtonstump.com)

*Attorneys for Defendants, Rehabilitation Center at  
Brethren Village, LLC, Brethren Village, Brethren  
Village Realty, LLC, and Lori Schoener, NHA*

**SAXTON & STUMP**

No. CI-22-04128

Collin T. Keyser, Esquire  
 Attorney I.D. No. 307505  
 Kimberly A. Selemba, Esquire  
 Attorney I.D. No. 93535  
 280 Granite Run Drive, Suite 300  
 Lancaster, PA 17601  
 Phone: (717) 556-1000  
[ctk@saxtonstump.com](mailto:ctk@saxtonstump.com)  
[kas@saxtonstump.com](mailto:kas@saxtonstump.com)

*Attorneys for Defendants, Rehabilitation Center  
 at Brethren Village, LLC, Brethren Village,  
 Brethren Village Realty, LLC, and Lori  
 Schoener, NHA*

BRENDA L. KLING, individually and as : IN THE COURT OF COMMON PLEAS  
 Administratrix of the Estate of : OF LANCASTER COUNTY,  
 GERALDINE E. WIGGINS, : PENNSYLVANIA

Plaintiff

: NO: CI-22-04128

v.

: MedMal

REHABILITATION CENTER AT :  
 BRETHREN VILLAGE, LLC, :  
 BRETHREN VILLAGE, BRETHREN :  
 VILLAGE REALTY, LLC, LORI :  
 SCHOENER, NHA, and JOHN DOES1- :  
 4 :

Defendants,

v.

NURSELECT, LLC,

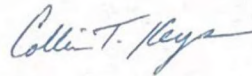
Additional :  
 Defendant. :

**CERTIFICATE OF SERVICE**

I, Collin T. Keyser, Esquire, certify that on this date, I served a certified true and correct copy of the foregoing Third-Party Joinder Complaint upon the following counsel and parties of record, via email and certified mail, addressed as follows:

No. CI-22-04128

Andrei Govorov, Esquire  
Rosenbaum & Associates, PC  
1818 Market Street, Suite 3200  
Philadelphia, PA 19103  
*(Attorney for Plaintiff)*  
*(via email)*



Date: June 13, 2023

By: \_\_\_\_\_  
Collin T. Keyser, Esquire



No. CI-22-04128

BRENDA L. KLING, individually and as : IN THE COURT OF COMMON PLEAS  
Administratrix of the Estate of : OF LANCASTER COUNTY,  
GERALDINE E. WIGGINS, : PENNSYLVANIA

Plaintiff

NO: CI-22-04128

v.

MedMal

REHABILITATION CENTER AT  
BRETHREN VILLAGE, LLC,  
BRETHREN VILLAGE, BRETHREN  
VILLAGE REALTY, LLC, LORI  
SCHOENER, NHA, and JOHN DOES1-  
4

Defendants,

v.

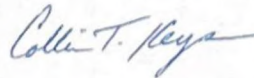
NURSELECT, LLC,

Additional  
Defendant.

**PUBLIC ACCESS POLICY CERTIFICATION**

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

SAXTON & STUMP



Date: June 13, 2023

By: \_\_\_\_\_  
Collin T. Keyser, Esquire



## EXHIBIT A

ENTERED AND FILED  
PROTHONOTARY'S OFFICE  
LANCASTER, PA

\*\*\*Electronically Filed\*\*\*

Dec 22 2022 12:29PM

Ryan McMinn

**ROSENBAUM & ASSOCIATES, P.C.**

BY: ANDREI GOVOROV, ESQUIRE

Attorney ID No.: 209365

1818 Market Street, Suite 3200

Philadelphia, PA 19103

(215) 569-0200

[agovorov@rosenbaumfirm.com](mailto:agovorov@rosenbaumfirm.com)

MAJOR-JURY

ASSESSMENT OF DAMAGES

HEARING IS REQUIRED.

JURY TRIAL DEMANDED

Attorney for Plaintiff

BRENDA L. KLING, ADMINISTRATRIX	:	LANCASTER COUNTY
of the ESTATE OF GERALDINE E. WIGGINS	:	COURT OF COMMON PLEAS
deceased	:	
	:	No.: CI-22-04128
vs.	:	
	:	FOURTH AMENDED COMPLAINT
REHABILITATION CENTER at BRETHREN	:	
VILLAGE, LLC; BRETHREN VILLAGE;	:	
BRETHREN VILLAGE REALTY, LLC;	:	
LORI SCHOENER, NHA; and	:	
JOHN DOES 1-4 (Fictitious Names)	:	

**CIVIL ACTION**  
**NOTICE**

YOU HAVE BEEN SUED IN COURT. IF YOU WISH TO DEFEND AGAINST THE CLAIMS SET FORTH IN THE FOLLOWING PAGES, YOU MUST TAKE ACTION WITHIN TWENTY (20) DAYS AFTER THIS COMPLAINT AND NOTICE ARE SERVED BY ENTERING A WRITTEN APPEARANCE PERSONALLY OR BY ATTORNEY AND FILING IN WRITING WITH THE COURT YOUR DEFENSES OR OBJECTIONS TO THE CLAIMS SET FORTH AGAINST YOU. YOU ARE WARNED THAT IF YOU FAIL TO DO SO THE CASE MAY PROCEED WITHOUT YOU AND A JUDGMENT MAY BE ENTERED AGAINST YOU BY THE COURT WITHOUT FURTHER NOTICE FOR ANY MONEY CLAIMED IN THE COMPLAINT OR FOR ANY OTHER CLAIM OR RELIEF REQUESTED BY THE PLAINTIFF. YOU MAY LOSE MONEY OR PROPERTY OR OTHER RIGHTS IMPORTANT TO YOU. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Lawyer Referral & Information Service  
Lancaster County Bar Association  
28 E Orange Street  
Lancaster, PA 17602

**AVISO**

LE HAN DEMANDADO A USTED EN LA CORTE. SI USTED QUIERE DEFENDERSE DE ESTAS DEMANDAS EXPUESTAS EN LAS PAGINAS SIGUIENTES, USTED TIENE VIENTE (20) DIAS DE PLAZO AL PARTIR DE LA FECHA DE LA DEMANDA Y LA NOTIFICACION. HACE FALTA ASENTAR UNA COMPARENCIA ESCRITA O EN PERSONA O CON UN ABOGADO Y ENTREGAR A LA CORTE EN FORMA ESCRITA SUS DEFENSAS O SUS OBJECIONES A LAS DEMANDAS EN CONTRA DE SU PERSONA. SEA AVISADO QUE SI USTED NO SE DEFIENDE, LA CORTE TOMARA MEDIDAS Y PUEDE CONTINUAR LA DEMANDA EN CONTRA SUYA SIN PREVIO AVISO O NOTIFICACION. ADEMÁS, LA CORTE PUEDE DECIDIR A FAVOR DEL DEMANDANTE

Y REQUIERE QUE USTED CUMPLA CON TODAS LAS PROVISIONES DE ESTA DEMANDA. USTED PUEDE PERDER DINERO O SUS PROPIEDADES U OTROS DERECHOS IMPORTANTES PARA USTED. LLEVE ESTA DEMANDA A UN ABOGADO INMEDIATAMENTE. SI NO TIENE ABOGADO O SI NO TIENE EL DINERO SUFICIENTE DE PAGAR TAL SERVICIO, VAYA EN PERSONA O LLAME POR TELEFONO A LA OFICINA CUYA DIRECCION SE ENCUENTRA ESCRITA ABAJO PARA AVERIGUAR DONDE SE PUEDE CONSEGUIR ASISTENCIA LEGAL.

Servicio de referencia e información de abogados  
Colegio de Abogados del Condado de Lancaster  
28 E Calle Naranja  
Lancaster, Pensilvania 17602



ROSENBAUM & ASSOCIATES, P.C.  
 BY: ANDREI GOVOROV, ESQUIRE  
 Attorney ID No.: 209365  
 1818 Market Street, Suite 3200  
 Philadelphia, PA 19103  
 (215) 569-0200  
[agovorov@rosenbaumfirm.com](mailto:agovorov@rosenbaumfirm.com)

MAJOR-JURY  
 ASSESSMENT OF DAMAGES  
 HEARING IS REQUIRED.  
 JURY TRIAL DEMANDED

Attorney for Plaintiff

BRENDA L. KLING, ADMINISTRATRIX of the ESTATE OF GERALDINE E. WIGGINS: deceased	:	LANCASTER COUNTY COURT OF COMMON PLEAS
	:	No.: CI-22-04128
vs.	:	FOURTH AMENDED COMPLAINT
REHABILITATION CENTER at BRETHREN VILLAGE, LLC; BRETHREN VILLAGE; BRETHREN VILLAGE REALTY, LLC; LORI SCHOENER, NHA; and JOHN DOES 1-4 (Fictitious Names)	:	

#### **FOURTH AMENDED COMPLAINT**

(This Fourth Amended Complaint Includes a Medical Professional Liability Action)

Plaintiff, Brenda L. Kling, Administratrix of the Estate of Geraldine E. Wiggins, deceased, by and through their counsel, Rosenbaum & Associates, P.C., files this Fourth Amended Complaint in Civil Action, and aver as follows:

1. Plaintiff, Brenda L. Kling, Administratrix of the Estate of Geraldine E. Wiggins, deceased, is an adult individual and daughter of Decedent, Geraldine E. Wiggins, residing at 19 Verbena Drive, Lancaster, Pennsylvania 17062.
2. Decedent, Geraldine E. Wiggins, died intestate on August 28, 2021.
3. Plaintiff, Brenda L. Kling, were appointed Administratrix of the Estate of Geraldine E. Wiggins, deceased, by the Register of Wills of Lancaster County, on September 23, 2021, and in this capacity acts on behalf of the Estate, the beneficiaries of the Estate and the potential wrongful death beneficiaries.
4. At the time of her death, Decedent, Geraldine E. Wiggins, left surviving a daughter Brenda L. Kling, on whose behalf this claim is, in part, is filed.



5. Defendant, Rehabilitation Center Brethren Village, LLC, is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and was engaged in the business of owning, operating, managing and offering healthcare, medical services, rehabilitation and nursing care to the public at a rehabilitation and nursing home facility, Rehabilitation Center at Brethren Village, LLC, ("Brethren Village") 3001 Lititz Pike, Lancaster, Pennsylvania. Plaintiff is asserting a professional liability claim against this Defendant.

6. At all times material hereto, Defendant, Rehabilitation Center at Brethren Village, LLC, acted or failed to act by and through its agents, ostensible agents, servants, workmen, nurses, nurse's aides, and/or employees, physicians, the nursing home administrators and/or administrators responsible for formulating, adopting, monitoring and enforcing the policies, procedures and protocols of Brethren Village from the time Geraldine E. Wiggins was admitted to Brethren Village on April 13, 2021, including the physicians, nurses, nurses' aides, staff members and employees responsible for the care, supervision, treatment and safety of Geraldine E. Wiggins, starting on April 13, 2021, which includes those physicians, nurses, nurses' aides, staff and employees identified in the records and charts of Brethren Village, whose names cannot be discerned from the records but whose identities are known to and within the exclusive control of Defendants, as well as those physicians, nurses, nurses' aides, staff and employees whose names are not recorded in the records due to Defendants' failure to implement and utilize proper record-keeping and documentation procedures but whose identities are known to and within the exclusive control of Defendants, all of whom were then and there acting within the scope of their authority and in the course of their employment with Defendant, Rehabilitation Center at Brethren Village, LLC, and in furtherance of Defendant, Rehabilitation Center at Brethren Village, LLC's business and on behalf of Defendant, Rehabilitation Center at Brethren Village, LLC.

7. Defendant, Brethren Village, is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and was engaged in the business of owning, operating, managing and offering healthcare, medical services, rehabilitation and nursing care to the public at a rehabilitation and nursing home facility, Rehabilitation Center at Brethren Village, LLC, ("Brethren

Village”) 3001 Lititz Pike, Lancaster, Pennsylvania. Plaintiff is asserting a professional liability claim against this Defendant.

8. At all times material hereto, Defendant, Brethren Village, acted or failed to act by and through its agents, ostensible agents, servants, workmen, nurses, nurse’s aides, and/or employees, physicians, the nursing home administrators and/or administrators responsible for formulating, adopting, monitoring and enforcing the policies, procedures and protocols of Brethren Village from the time Geraldine E. Wiggins was admitted to Brethren Village on April 13, 2021, including the physicians, nurses, nurses’ aides, staff members and employees responsible for the care, supervision, treatment and safety of Geraldine E. Wiggins, starting on April 13, 2021, which includes those physicians, nurses, nurses’ aides, staff and employees identified in the records and charts of Brethren Village, whose names cannot be discerned from the records but whose identities are known to and within the exclusive control of Defendants, as well as those physicians, nurses, nurses’ aides, staff and employees whose names are not recorded in the records due to Defendants’ failure to implement and utilize proper record-keeping and documentation procedures but whose identities are known to and within the exclusive control of Defendants, all of whom were then and there acting within the scope of their authority and in the course of their employment with Defendant, Brethren Village, and in furtherance of Defendant, Brethren Village’s business and on behalf of Brethren Village.

9. Defendant, Brethren Village Realty, LLC, is a business corporation organized and existing under the laws of the Commonwealth of Pennsylvania, and was engaged in the business of owning, operating, managing and offering healthcare, medical services, rehabilitation and nursing care to the public at a rehabilitation and nursing home facility, Rehabilitation Center at Brethren Village, LLC, (“Brethren Village”) 3001 Lititz Pike, Lancaster, Pennsylvania. Plaintiff is asserting a professional liability claim against this Defendant.

10. At all times material hereto, Defendant, Brethren Village Realty, LLC, acted or failed to act by and through its agents, ostensible agents, servants, workmen, nurses, nurse’s aides, and/or employees, physicians, the nursing home administrators and/or administrators responsible for formulating, adopting,



monitoring and enforcing the policies, procedures and protocols of Brethren Village from the time Geraldine E. Wiggins was admitted to Brethren Village on April 13, 2021, including the physicians, nurses, nurses' aides, staff members and employees responsible for the care, supervision, treatment and safety of Geraldine E. Wiggins, starting on April 13, 2021, which includes those physicians, nurses, nurses' aides, staff and employees identified in the records and charts of Brethren Village, whose names cannot be discerned from the records but whose identities are known to and within the exclusive control of Defendants, as well as those physicians, nurses, nurses' aides, staff and employees whose names are not recorded in the records due to Defendants' failure to implement and utilize proper record-keeping and documentation procedures but whose identities are known to and within the exclusive control of Defendants, all of whom were then and there acting within the scope of their authority and in the course of their employment with Defendant, Brethren Village Realty, LLC, and in furtherance of Defendant, Brethren Village Realty, LLC's business and on behalf of Brethren Village Realty, LLC.

11. Defendant, Lori Schoener, is an individual residing herein at 123 Race Street, Richland, Pennsylvania 17087. Upon information and believe, at all relevant and material times herein, Lori Schoener was the licensed Nursing Home Administrator of Rehabilitation Center at Brethren Village, LLC during the residency of Geraldine E. Wiggins, and is therefore personally, jointly and vicariously liable, among other things, for the acts and omissions of herself and her agents, employees, servants, contractors, staff, and/or partners and all other Defendants, who played a role in the care provided to Geraldine E. Wiggins and in the operation of Brethren Village.

12. Defendants, Joe Does 1-4 (Fictitious Names) are individuals, corporations and/or other entities whose identities, after reasonable investigation, are currently unknown, but at all times relevant hereto owned, operated, controlled and/or managed Rehabilitation Center of Brethen Village, LLC and/or provided medical, nursing, rehabilitation and other health care services to Geraldine E. Wiggins during her admission to Rehabilitation Center of Brethren Village, LLC.

13. At all times material hereto, the Defendants individually and collectively owed duties to the residents of Brethren Village, including Geraldine E. Wiggins.

14. At all times relevant and material hereto the Defendants were aware of their obligations under the laws of the United States of America and of the Commonwealth of Pennsylvania with which Defendants were required to comply in providing care to Decedent including the United States Code, Pennsylvania Consolidated Statutes and the Pennsylvania Administrative Code.

15. The Defendants, directly and/or through their respective agents, servants and/or employees, accepted the responsibility for the care of Geraldine E. Wiggins, and in so doing, undertook and/or assumed a duty to Geraldine E. Wiggins to provide a safe nursing home facility necessary for the proper practice of medicine at said rehabilitation facility and to render reasonable, competent, proper, adequate and appropriate medical care, rehabilitation and nursing care, custodial care, rehabilitation services and treatment and, to take appropriate, preventative and curative measures as well as adequately supervise, monitor, and provide timely treatment and services to Geraldine E. Wiggins, and avoid and prevent harm to her.

16. The Defendants owed a duty to Geraldine E. Wiggins to exercise reasonable and ordinary care as a resident at Defendants' facility receiving medical, nursing, rehabilitation and other allied healthcare services. The Defendants' duties included, but were not limited to, establishing and enforcing their respective nursing home facility rules and regulations, medical staff practices, bylaws, policies, procedures, rules and regulations which mandate provision of proper medical, nursing and other healthcare provider services and/or care to the rehabilitation patients, including Geraldine E. Wiggins. The Defendants' duties also included hiring competent medical, nursing and other allied healthcare personnel, continuing and ongoing review of said competency, maintaining the facility such that it is free from ordinary hazards and defective equipment, maintaining sufficient staffing levels, insuring that all patients receive adequate, competent and timely medical, rehabilitation and other allied health care treatment and services while a patient at their rehabilitation facility, and, establishing and enforcing policies, procedures, protocols and systems to monitor their staff to ensure that all patients are receiving proper and timely care and treatment including, but not limited to, complete and accurate resident assessments, developing, enforcing and revising individualized, resident-centered care plans, adequate supervision/monitoring, proper use of



medication, proper use of physical and/or chemical restraints, proper establishment and enforcement of procedures for medical and nursing review and/or audit of the care given to patients, proper establishment of policies, procedures, protocols and guidelines to ensure that proper medical, rehabilitation, custodial and nursing care are performed on and for patients at their facility, including Geraldine E. Wiggins.

17. At all times relevant hereto, the Defendants, directly and/or through contractual agreement had a corporate responsibility through their respective bylaws, medical staff bylaws, rules, regulations and ongoing government functions to assure that only competent physicians, nurses and other health care providers engage in the medical, rehabilitation and nursing practice at this rehabilitation facility and other related fields of medicine on the Defendants' premises.

18. Defendants exercised complete and total control over the healthcare, skilled nursing and custodial care of all residents of their nursing facility, including Geraldine E. Wiggins.

19. At all times material hereto, Defendants were vertically integrated organizations / corporations that were controlled by their respective members, officers, managers, and/or board of directors who were responsible for the operation, planning, management and quality control of their Facility, Brethren Village.

20. At all times material hereto, the control exercised over the Facility by Defendants included, inter alia: budgeting, marketing, cash management, cost control, reimbursement, setting staffing levels, maintaining and increasing census, human resource management, training, supervision and oversight of their Facility's Administrator, supervision and oversight of their Facility's Director of Nursing, supervision of staff, obtaining licensure and certification, conducting mock surveys, conducting customer satisfaction surveys and monitoring customer satisfaction, corporate and regulatory compliance, quality of care assessment, and the creation and implementation of all policy and procedure manuals used by the Facility.

21. Defendants have failed to adequately train and/or supervise their physicians, nurses, nurses' aides and other healthcare providers which has resulted in personal harm and injury to Geraldine E. Wiggins.

22. The provisions of OBRA (Omnibus Budget Reconciliation Act of 1987) are applicable

with regard to Geraldine E. Wiggins' condition as it existed while in the Defendants' care and during her admission at the Defendants' facility beginning on April 13, 2021.

23. The Defendants held themselves out as a specialist in the field of rehabilitation care with the expertise necessary to maintain the health and safety of persons unable to care adequately for themselves.

24. At all times pertinent hereto, Geraldine E. Wiggins was a patient at Rehabilitation Center of Brethren Village, LLC and was under the exclusive care and control of the Defendants, their agents, officers, servants and/or employees.

25. The Defendants, their agents, officers, servants and/or employees failed, refused and/or neglected to perform the duties to provide reasonable and adequate health care to and for Geraldine E. Wiggins who was unable to attend to her own health, safety and well-being.

26. The Defendants, their agents, officers, servants and/or employees negligently, carelessly and recklessly provided care and treatment to Geraldine E. Wiggins, and all of the alleged acts, omissions and occurrences herein described or performed by the Defendants, their agents, officers, servants and/or employees fell within the course and scope of their agency and employment with the Defendants and in furtherance of the Defendants' business.

27. The Defendants provide twenty-four (24) hour a day, seven (7) day a week medical, nursing, custodial and rehabilitation care, services and assistance to its patients who have issues related to age, illness, disease, injury, convalescence and physical and mental infirmity.

28. The Defendants are responsible for nearly all the health care needs of their residents, including but not limited to, assistance with activities of daily living, bed mobility, transfer, ambulation, personal hygiene, nutrition, hydration, restorative care, incontinence care, turning and repositioning, supervision, monitoring, safety and rehabilitation.

29. The Defendants are responsible for ensuring that all doctor-ordered testing and medical services are performed.

30. The Defendants are required to conduct comprehensive and accurate assessment of their



patients' functional capacity, as well as their patients' needs and risk factors.

31. The Defendants are required to formulate and develop an individualized health "Care Plan" upon admission of each patient.

32. The Defendants are responsible for determining patients' risk level for injury including falls.

33. The Defendants are responsible for formulating, adopting, modifying and implementing injury prevention programs and care directives, including prevention programs for patients at risk for falls.

34. The Defendants are responsible for ensuring that injury prevention programs, procedures and protocols are implemented, executed and performed including prevention programs and procedures to prevent falls.

35. The Defendants are responsible for ensuring that a "Care Plan" is personalized for each patient and modified and/or revised as needs change.

36. The Defendants are responsible for ensuring that a "Care Plan" for patients includes safety measures and interventions to prevent falls.

37. The Defendants are responsible for ensuring that safety measures and interventions, including adequate pressure-relieving assistive devices, individualized turning and repositioning schedule, implementation of the appropriate infection control policies, procedures and techniques, hydration and nutrition protocols, adequate and timely incontinence care, hygiene services, adequate supervision and monitoring of patients with decreased mobility, safety awareness and cognition are implemented and executed.

38. Geraldine E. Wiggins, was admitted to Rehabilitation Center at Brethren Village, LLC on April 13, 2021 with diagnoses that included ambulatory dysfunction, generalized weakness and new onset A-Fib.

39. A "Fall Risk Assessment" was completed at time of admission and Geraldine E. Wiggins was considered at risk for falls related to a score of "26" (*a resident whose score is over 9 is at risk for falls*).

40. The "History of Present Illness" documented Geraldine E. Wiggins' reason for admission to Brethren Village as:

*Geraldine Wiggins is a 92 y.o. female admitted to nursing facility for ambulatory dysfunction having 2 falls at home prior to observation stay at LGH, for further PT/OT evaluation and treatment. Has had right knee pain since falls at home, XR in hospital negative for fracture. Today, states she feels a little hot and is tired, but otherwise she denies any pain, palpitation/flutter in chest, SOB, change in bowel or bladder.*

41. The staff at Brethren Village was aware of the patient's need for assistance with ambulation, activities of daily living and fall prevention as documented on the "Care Plan" for "Needs staff assistance for ADL's because of weakness" and "Has history of falls, potential for fall-related injury."

42. The following are some of the interventions the staff was to utilize to provide care and prevent falls for this patient:

*\* Be aware resident unable to independently bathe, dress, move self in bed, transfer, ambulate, toilet self, perform personal hygiene measures and feed self*

*Ambulate in hallway with rolling walker and one/two assist with gaitbelt*

*Encourage and assist resident as needed to bathroom upon rising, between meals and at bedtime*

*Observe for and report any decline in ADL performance; record appropriately in the EMR*

*One/Two assist for stand/pivot/weight bear between all support surfaces*

*Set up in bathroom at sink with supplies for grooming and bathing with assist as needed*

*My transfer status is stand and pivot Ax1 w/RW*

*Assist with ADL's, transfers and locomotion as needed, utilizing safety measures*

*Remind resident of the importance of asking for help before getting up or transferring, especially if he/she feels lightheaded or weak*

*When finding resident attempting to transfer independently, assess for basic needs, i.e., food, fluid, toileting, pain, boredom/anxiety*

43. Pursuant to medical records, Brethren Village increased their staff's workload related to Covid-19 precautions. But, despite the increase in staff workload, the staff of Brethren Village was well aware Geraldine E. Wiggins required one staff member and her assistive device to ambulate and transfer



safely.

44. The staff was also aware that the patient self-transferred but did not intervene or initiate additional interventions to prevent falls for this patient.

45. The April 24, 2021 "Statement Form" documented *"when I took care of Geraldine this morning caught her in the bathroom by herself she told me she took herself and at the time I didn't see a bruise."*

46. The patient's risk of falls was increased due to episodes of *"respiratory distress"* documented on the April 28, 2021 "MD Progress Notes" as *"Geraldine complained of shortness of breath this morning and was found to be hypoxic. Her SpO2 at the time was in the mid to high 80's and improved to the low 90s with supplemental oxygen."*

47. On May 3, 2021, "Physician's Orders" documented *"resident wheezing", "O2 sat 84%, lungs very diminished."*

48. A May 7, 2021 "MD Progress Note" revealed the patient's increased weakness during the morning hours as:

*Geraldine Wiggins is a 92 y.o. female seen and examined in her room on the rehabilitation unit, resting in her recliner chair. She reports she is feeling short of breath on exam. She admits to just waking up and ambulating which is when she often feels dyspnea.*

*She attests to being more tired in the mornings and feeling better as the day goes on.*

*Ambulatory Dysfunction: Geraldine reports therapy is going well, but that she does not feel ready to go home next week. PT reporting, she can ambulate up to 150 ft with four wheel walker and staff assistance, seems to have increased weakness and decreased functional status in the early morning. Will be discharged to personal care when appropriate, no discharge date set at this time. Continue PT/OT, continue to monitor.*

49. Geraldine E. Wiggins demonstrated a significant cognitive decline on May 9, 2021, documented in the "Progress Notes" as *"Res has been noted by staff to have been confused today. She had woken up several times unaware of where she was or what time of day it had been. Urine has fowl odor and is dark in color. Sip & Dip initiated."*

50. A May 10, 2021 "Progress Note" further documented *"Safety concerns: Yes. Safely*

*Concerns – note: Confusion and forgetfulness.”*

51. “Medication Administration Record” reveal a “Physician Order” dated May 10, 2021 for, “d/c functional abilities days 1-3 every day shift until 05/12/2021.” The MAR had the days of May 10, 11, and 12 highlighted to carry out the physician’s order.

52. Despite the fact the patient required staff assist for ambulation and activities of daily living, increased confusion, increased weakness and decreased functional ability in the morning hours and ordered to have her functional abilities discontinued on May 12, the staff of Brethren Village left Geraldine E. Wiggins alone at the bathroom sink on May 12, 2021 at 7:30AM.

53. The May 12, 2021 “Progress Note” documented the following:

*Patient on floor near at the foot of her recliner with walker in front of her and bed side table behind her. The back of her head was bleeding. We got her up off the floor and onto the chair. There was a quarter sized hematoma with small laceration to the base of the skull. Patient had been standing at the sink brushing her teeth when the CNA left her in the bathroom to take care of another patient who was having blood sugar issues. Patient then attempted to walk to the recliner to sit down and as she did she lost her balance falling backwards hitting her head on the base of the bedside table. First aid attempted with neuro and physical assessment. No other injuries noted. Pressure was applied to laceration for 15 minutes and continued to profusely bleed. MD called and order obtained to send to ER. Pressure applied for another 25 minutes until ambulance arrived to transport to LGH ER for evaluation at 0820 by MT ambulance. Denies pain. Neuro checks WNL. Daughter aware.*

54. Geraldine E. Wiggins was left alone despite the Plan of Care revealing the patient required staff assistance, despite the medical provider documenting “increased weakness and decreased functional status in the early morning,” despite her new onset of confusion, and the need for functional abilities to be temporarily discontinued.

55. The May 12, 2021 “Incident Report” documented Geraldine E. Wiggins’ “Predisposing Physiological Factors” as “*Gait Imbalance, Impaired Memory*” and her “Predisposing Situation Factor” as “*Ambulating without assist*”.

56. Geraldine E. Wiggins was transferred to Lancaster General Hospital on May 12, 2021. The Emergency Department Records reveals the following information:

- *Chief Complaint: Head Injury, Fall Evaluation*



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- Arrives via BLS amb from rehab center at Brethren Village after falling and striking head on corner of bedside nightstand.

With hematoma to posterior head.

ECF staff "couldn't get bleeding to stop" after holding pressure for 45 minutes.

EMS reports bleeding through ABD pad that was placed by them.

+ Plavix use.

Denies any abd, chest, back or neck pain.

HPI: patient is a 92-year-old female who presents after a fall. It was unwitnessed. She does have some mild confusion making history of present illness limited. The patient cannot tell me why she fell. She said, "I thought I can make it over to the chair."

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MDM: Patient presents with occipital hematoma with mild oozing. On my exam the patient was awake and alert but pleasantly confused. She did have an occipital hematoma with a small open wound. Figure-eight suture placed by physician's assistant. Bleeding subsided. Patient noted to have a C7 fracture. Cervical collar applied. She had no neck pain. Case discussed with the trauma service who recommended imaging of her chest abdomen pelvis. I also ordered basic bloodwork. Disposition is pending their evaluation. Patient remained comfortable in the ER.

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CT Angiogram Chest: Since the prior study, the patient has suffered mild superior endplate compression fractures at C7 and T1. A superior endplate compression fracture at T2 is stable. Multiple new compression fractures, most notable at the T7 level.

57. The May 12, 2021 "Neurosurgery Note" documented the "Impression/Plan" as "Acute fracture C7, T1 with no significant retropulsion", "Currently oriented to person only", "No surgical intervention needed" and "Aspen Cervical collar OK per Dr. Hernandez."

58. Geraldine E. Wiggins was readmitted to Brethren Village from Lancaster General Hospital.

59. On May 15, 201, Speech Therapy documented Geraldine E. Wiggins as "referred by physician for speech swallow evaluation. Patient exhibiting difficulty completing meals and rotary chew for regular diet intake. The functional deficits are caused by generalized weakness, decreased range of motion from C Collar placement."

60. The vertebral fracture and need for a cervical collar interfered with her meal consumption.

61. Geraldine E. Wiggins died on August 28, 2021 with failure to thrive listed at the cause of death.

62. Decedent suffered horrific injuries as a consequence of the negligence, neglect and abuse by Defendants, and/or Defendants' real and/or ostensible servants, agents and/or employees.

63. The negligence, neglect and abuse of Geraldine E. Wiggins by Defendants, and/or Defendants' agents and resulting injuries caused a significant decline in Decedent's clinical status and were significant contributing factors in causing Decedent's death.

64. The severity of the negligence, neglect and abuse inflicted upon Geraldine E. Wiggins by the Defendants' mismanagement, improper under-budgeting, understaffing of the facility and lack of training and/or supervision of the facility's employees, failure to provide adequate and appropriate health care, engaging in incomplete, inconsistent and fraudulent documentation, failure to develop and implement an appropriate care plan, failure to conduct accurate patient assessment, failure to ensure the highest level of physical, mental and psychosocial functioning was attained or maintained, failure to provide appropriate monitoring, supervision, care and services caused Decedent to experience, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scarring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

65. As a direct result of the Defendants' negligence, neglect, abuse, carelessness and recklessness herein described, Decedent was caused to suffer serious and permanent injuries as described herein, including a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scarring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.



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**CONDUCT OF THE DEFENDANTS**

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66. Plaintiff hereby incorporates by reference the prior paragraphs of this Fourth Amended Complaint, as if they have been more fully set forth herein.

67. During the course of her admission, Geraldine E. Wiggins was incapable of independently providing for all of her daily care and personal needs without reliable assistance.

68. At all relevant times, the Defendants, through their agents, servants, employees and/or representatives: (a) should have been and/or were aware of Geraldine E. Wiggins' needs and (b) represented that they could adequately care for her needs.

69. In exchange for money, Geraldine E. Wiggins was admitted to the Defendants' care at Brethren Village to obtain such care and protection.

70. The Defendants, upon information and belief, were controlled by a board of directors who were responsible for the operation, planning, management and quality control of Brethren Village.

71. At all relevant times, the Defendants, individually, and/or through their agents, servants and employees, assessed the needs of Geraldine E. Wiggins and promised that they would adequately care for her needs, akin to a hospital.

72. The Defendants were responsible for the operation, planning, management and quality control of their Facility.

73. The control exercised over the Defendants' Facility by the Defendants, included: budgeting, marketing, cash management, cost control, reimbursement, setting staffing levels, maintaining and increasing census, human resource management, training, supervision and oversight of their Facility's administrator, supervision and oversight of their Facility's director of nursing, supervision of staff, obtaining licensure and certification, conducting mock surveys, conducting customer satisfaction surveys and monitoring customer satisfaction, corporate and regulatory compliance, quality of care assessment, and the creation and implementation of all policy and procedure manuals used by their Facility.

74. The Defendants controlled reimbursement, quality care assessment and compliance, licensure, certification, and all financial, tax and accounting issues through control of the fiscal policies of

Brethren Village.

75. Upon information and belief, the corporate officers of Defendants utilized survey results and quality indicators to monitor the care being provided at their nursing homes, including Brethren Village.

76. Upon information and belief, the Defendants, including their owners, officers, directors, partners, members, managers and employees knew that Rehabilitation Center at Brethren Village, LLC has been cited by governmental units as follows:

1/23/2020: failed to assess a pressure ulcer for one of one resident's reviewed; and

8/12/2021: failed to comprehensively assess and administer medication to a wound; and timely administer wound treatment to a sacral wound for one of seven residents reviewed.

77. As a direct and proximate result of the Defendants' acts and omissions, and their breach of the duty of care, negligence, carelessness and recklessness, Decedent suffered: (a) severe permanent physical injuries resulting in pain, suffering, and disfigurement; (b) mental anguish, embarrassment, humiliation, degradation, emotional distress, and loss of personal dignity; (c) loss of capacity for enjoyment of life; (d) expense of otherwise unnecessary hospitalizations and medical care; and (e) death.

78. In causing the aforesaid injuries, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

79. The conduct of the Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

80. At all relevant times, the Defendants, individually, and/or through their agents, servants and employees, assessed the needs of Geraldine E. Wiggins, and promised that they would adequately care for her needs, akin to a hospital.

81. At all relevant times, the Defendants made a conscious decision to operate and/or manage their Facility so as to maximize profits at the expense of the care required to be provided to their residents, including Geraldine E. Wiggins.



82. In their efforts to maximize profits, the Defendants reduced staffing levels below the level necessary to provide adequate and timely care and services to their patients, including Geraldine E. Wiggins.

83. Upon information and belief, the Defendants caused staffing levels at their Facility to be set at a level such that the personnel on duty at any given time could not and did not reasonably and timely tend to the needs of their assigned patients, including Geraldine E. Wiggins.

84. Upon information and belief, the Defendants intentionally increased the number of sick and frail residents with greater health problems requiring more complex care.

85. The Defendants knew that the increase in the acuity care levels of the patient population would substantially increase the need for staff, services and supplies necessary for the patient population.

86. The Defendants failed to provide the resources necessary, including sufficient staff, services and supplies, to meet the needs of their patients, including Geraldine E. Wiggins.

87. The Defendants negligently, carelessly and recklessly caused the healthcare providers, nurses and nurses' aides who they placed and/or staffed at their Facility to be so unqualified and/or under-trained, that the personnel on duty at any given time could not and did not reasonably and timely tend to the needs of their assigned patients, including Geraldine E. Wiggins.

88. The aforementioned acts and omissions directly caused and/or increased the risk of the injuries and harm to Geraldine E. Wiggins and were known by the Defendants.

89. At all relevant times, the Facility was individually owned, and/or in concert owned, possessed, managed, controlled, operated and maintained under the exclusive control of the Defendants.

90. At all relevant times, the Defendants were operating individually or through their managers, members, partners, officers, agents, servants and employees who had actual, apparent and/or ostensible authority, and all of whom were acting within the course and scope of their employment and under the direct and exclusive control of the Defendants.

91. The aforementioned injuries, acts and omissions were caused solely and exclusively by reason of negligence, carelessness and recklessness of the Defendants, and their agents, servants and employees and were due in no part to any act or omission to act on the part of Geraldine E. Wiggins.

92. The Defendants exercised complete and total control over the total and complete healthcare of all the patients of their Facility, including Geraldine E. Wiggins, akin to a hospital.

**COUNT I – NEGLIGENCE**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**  
**v.**

**REHABILITATION CENTER AT BRETHREN VILLAGE, LLC, BRETHREN VILLAGE,  
BRETHREN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4**

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93. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint, as though same were fully set forth at length herein.

94. Upon accepting Geraldine E. Wiggins as a resident at their Facility, the Defendants, individually and jointly, assumed direct duties to provide her with adequate, timely and appropriate healthcare and other basic custodial services as set forth herein.

95. The Defendants had the ultimate responsibility to ensure that the rights, safety, welfare and well-being of their residents, including Geraldine E. Wiggins, were protected.

96. The Defendants owed a duty to provide adequate, timely and appropriate healthcare and related skilled nursing, custodial, restorative, therapy and rehabilitation care and services to their residents, including Geraldine E. Wiggins, such as reasonable caregivers would provide under similar circumstances.

97. The Defendants each owed duty to their patients, including Geraldine E. Wiggins, to hire, train, oversee and supervise their employees to ensure that their Facility was operated, and services were provided, to their residents in a safe and reasonable matter.

98. The Defendants each owed a duty and responsibility to furnish Geraldine E. Wiggins with appropriate, timely and competent medical, nursing and custodial care and services.

99. The Defendants each owed and failed to fulfill the following duties and responsibilities to Geraldine E. Wiggins:



- i) The duty to use reasonable care in the maintenance of safe and adequate facility;
- ii) The duty to select, hire, train and retain only competent staff;
- iii) The duty to oversee, monitor and supervise all persons who practice nursing and/or medical healthcare within their facility;
- iv) The duty to staff their facility with sufficient and adequately trained personnel to provide the care and services required by their facility's patients;
- v) The duty to maintain sufficient staffing, funding, supplies and resources for the facility to meet the needs of their facility's patients;
- vi) The duty to formulate, adopt, oversee, revise and enforce rules, policies, procedures and protocols to ensure quality of care for all their facility's patients;
- vii) The duty to take adequate, timely and appropriate measures to correct the known problems with quality of care, as well as the known problems with the delivery of medical, nursing and custodial care and services;
- viii) The duty to keep their facility's patients free and safe from abuse and neglect;
- ix) The duty to provide safe, decent and clean environment for their facility's patients; and
- x) The duty to warn their facility's patients, as well as their families and/or responsible parties, of the Defendants' inability to provide adequate, timely, appropriate and safe care and services when the Defendants were placed on notice, knew, or should have known, of the deficiencies in providing such care and services to and for their patients.

100. In addition to the direct acts and omissions of the Defendants, the Defendants also acted through their agents, servants, officers and employees, who were in turn acting within the course and scope of their employment, in furtherance of the Defendants' business and under the direct control and supervision of the Defendants.

101. All of the acts alleged to have been done or not to have been done by the Defendants were done or not done by said Defendants, their agents, ostensible agents, servants, workmen and/or employees, acting in the course and scope of their employment with and on behalf of said Defendants and failed or refused to act with reasonable care in the following manner:

- a. violating their duty to provide adequate resident care, including but not limited to diagnosis, evaluation, assessment, supervision, monitoring, medication and treatment monitoring, medication and treatment to and for Geraldine E. Wiggins;
- b. failure to provide adequate supervision and monitoring to Geraldine E. Wiggins to avoid accidents;

- c. failure to keep Geraldine E. Wiggins safe from falls;
- d. failure to identify and implement adequate interventions to keep Geraldine E. Wiggins safe;
- e. failure to develop a comprehensive care plan to address Geraldine E. Wiggins' fall risk;
- f. failure to monitor the effectiveness of interventions and modify Geraldine E. Wiggins' care plan when her condition required the same;
- g. violating their duty to develop and implement a comprehensive Care Plan to prevent a fall resulting in hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and death;
- h. violating their duty to develop and implement timely interventions to prevent a fall resulting in hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and death;
- i. failure to recognize that the Decedent was at risk for falls and provide appropriate and adequate supervision and monitoring to prevent a fall resulting in hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and death;
- j. failure to recognize the Decedent's fall-risk factors and prevent a fall resulting in hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and death;
- k. failure to properly assess and document the Decedent's change in condition;
- l. failure to provide for the Decedent's well-being and keep her safe from a fall resulting in hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and death;
- m. failure to provide for the Decedent's safety and well-being;
- n. failing to make the appropriate, thorough and timely assessment of Decedent's condition;
- o. failing to seek timely medical care when Decedent's condition required same;
- p. failing to properly train and supervise Defendants' actual or ostensible employees, servants, agents or other staff or healthcare providers to monitor Decedent and to provide for her safety, welfare and general well-being;
- q. failing to properly hire, train and supervise staff, employees and healthcare providers at Defendants' facility;
- r. failing to monitor the competency, adequacy and propriety of the treatment rendered by their agents, servants and employees who provided care and treatment to Decedent while a resident at Defendants' facility;



- s. failing to maintain Defendants' duty to formulate, adopt and enforce adequate policies, procedures and protocols to ensure that their facility's patients, including Decedent, are properly supervised, assessed, monitored and receive proper and timely medical, custodial and nursing care;
- t. failing to maintain Defendants' duty to formulate, adopt and enforce adequate policies, procedures and protocols to ensure that their facility's patients, including Decedent, are properly supervised, monitored and receive proper medical, custodial and nursing care to keep her free from pressure injuries;
- u. failing to maintain Defendants' duty to formulate, adopt and enforce adequate policies, procedures and protocols to ensure that their facility's patients, including Decedent, are properly supervised, monitored and receive proper medical, custodial and nursing care to keep her free from infections and sepsis;
- v. failing to maintain Defendants' duty to formulate, adopt and enforce adequate policies, procedures and protocols to ensure that their facility's residents, including Decedent, are properly supervised, monitored and receive proper medical, custodial and nursing care to keep him free from protein-calorie malnutrition;
- w. failing to administer the facility in a manner that enabled it to use its resource effectively and efficiently to attain or maintain the highest practicable physical, mental, and psychosocial well-being of the facility's residents, including Decedent;
- x. failing to ensure that the Defendants used the results of its assessments to develop, review and revise Decedent's "Care Plan";
- y. failing to ensure that Defendants' facility had sufficient nursing staff to provide nursing and custodial care and services to the residents in order to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident, including Decedent;
- z. failing to maintain compliance with the governmental rules and regulation to which Defendants' delivery of care is compared as part of the survey process conducted by the Pennsylvania Department of Health;
- aa. failing to provide adequate and sufficient staffing levels at Defendants' facility;
- bb. failing to properly select, retain and monitor the competency of the medical and nursing staff, their employees, agents, servants and other healthcare providers who treated Decedent and failing to ensure such persons provided care within the applicable standards of care;
- cc. failing to keep Decedent free from neglect and abuse;
- dd. failing to take appropriate steps to remedy continuing problems at the Defendants' facility that Defendants knew, or had reason to know, were occurring with Decedent's care, which included the need to increase the number of the facility's employees, hiring skilled and trained employees, adequately train and supervise the current employees, monitoring

conduct of the employees, and adopting new or changing the existing policies, procedures and protocols to ensure care provided was provided within the appropriate community standards;

- ee. making false, fraudulent, inadequate and inconsistent notes in Decedent's chart;
- ff. failing to obtain new or modified "Physicians' Orders" when changes in Decedent's condition were recognized by Defendants' agents;
- gg. failing to accurately, timely and consistently document Decedent's needs and the care and services provided to her in response to such needs;
- hh. violating Pennsylvania Statutes, Pennsylvania Administrative Regulations, as well as OBRA regulations;
- ii. grossly understaffing Defendants' facility;
- jj. failing to train the employees to recognize medical conditions/symptoms which required Decedent's transfer to the hospital;
- kk. failing to allocate adequate funds, resources and supplies and failure to implement a facility budget that provided for the necessary and sufficient funds, resources and staffing levels to enable and allow their facility to provide adequate, timely appropriate care and services to the facility's residents, including Decedent;
- ll. failure to recognize and investigate neglect and abuse occurring with the care and services provided and not provided to Decedent, and failure to report such neglect and abuse to the appropriate governmental agencies;
- m. All of the acts or failure to act constitute a deviation from the appropriate standards of care, negligence, carelessness and reckless indifference to the health, safety, welfare and well-being of Decedent;
- nn. Defendants' conduct caused harm to Decedent and increased the risk of harm to her; and
- oo. in committing the aforementioned acts and omissions, Defendants were acting negligently, carelessly and with reckless indifference to the safety, welfare and well-being of Decedent.

102. Upon information and belief, the Defendants, including their owners, members, managers, officers, directors and partners knew of and/or were made aware of the Pennsylvania Department of Health annual and complaint survey results and placed on notice of the status of Brethren Village.

103. At all times relevant to this lawsuit, the Defendants employed and directed physicians, nurses and other medical personnel who rendered care to Geraldine E. Wiggins.



104. At all times relevant to this lawsuit, the Defendants owed a duty to Geraldine E. Wiggins to provide competent and qualified physicians, surgeons, nurses, nurses' aides and other medical and quasi medical personnel to render proper care to her.

105. At all times relevant to this lawsuit, the Defendants owed Geraldine E. Wiggins a duty to operate their rehabilitation Facility in a careful and reasonable manner, under the circumstances, as would have been done by other rehabilitation facilities in and about the Pennsylvania area.

106. At all times relevant to this lawsuit, Defendants and their agents, staff and employees, owed Geraldine E. Wiggins the duty to possess and exercise that degree of skill and knowledge ordinarily possessed and exercised by similar rehabilitation, physicians and/or nurses in and about the Pennsylvania area.

107. At all times relevant hereto, Geraldine E. Wiggins' care was to be delivered and administered by medical staff, nursing staff and healthcare staff at the Defendants' rehabilitation Facility in a reasonably safe and prudent manner within the applicable standards of care for the community, as well as state and federal nursing home facility rules and regulations.

108. Geraldine E. Wiggins was a resident at Defendants' rehabilitation Facility and the Defendants negligently and carelessly and in wanton and willful disregard for her health, safety and general welfare, inflicted injury upon her in failing to timely provide appropriate and necessary medical, nursing, rehabilitation and custodial care, adequate monitoring and supervision.

109. As a direct and proximate result of the negligence, carelessness and recklessness of the Defendants, as is more fully set forth herein, Geraldine E. Wiggins experienced, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

110. Geraldine E. Wiggins experienced severe and excruciating pain and suffering as the result of the aforesaid negligent, careless and reckless conduct of the Defendants, and Defendants' agents, and

their breach of the duty of care as set forth herein.

111. In causing the aforesaid injuries, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

112. Pennsylvania Code Chapter 28, Section 201 *et. seq.*, requires Defendants to comply with all federal, state and local regulations with regard to long-term care facilities.

113. The Defendants violated OBRA regulations, which establish the minimum standard of care to be followed by Defendants, including but not limited to the following:

- (a) 42 C.F.R. § 483.10 (a)(1) / § 483.10 the patient has a right to a dignified existence;
- (b) 42 C.F.R. § 483.12 / § 483.13 (b) & (c) the patient has the right to be free from abuse, neglect, misappropriation of patient property, and exploitation as defined in this subpart;
- (c) 42 C.F.R. § 483.12 (c)(1) / § 483.13(c)(2) the facility must ensure that all alleged violations involving abuse, neglect, exploitation or mistreatment, including injuries of unknown source and misappropriation of patient property, are reported immediately, but not later than 2 hours after the allegation is made, if the events that cause the allegation involve abuse or result in serious bodily injury, or not later than 24 hours if the events that cause the allegation do not involve abuse and do not result in serious bodily injury, to the Administratrices of the facility and other officials (including to the State Survey Agency and adult protective services where state law provides for jurisdiction in long-term care facilities) in accordance with State law through established procedures;
- (d) 42 C.F.R. § 483.20 (2)(ii) the facility must conduct an assessment after a significant change in patient's condition;
- (e) 42 C.F.R. § 483.21 (b)(b) / § 483.20(k) Comprehensive Care Plans, the facility must develop and implement a comprehensive person-centered care plan for each patient, consistent with the patient rights, that includes measurable objectives and timeframes to meet a patient's medical, nursing, and mental and psychosocial needs that are identified in the comprehensive assessment;
- (f) 42 C.F.R. § 483.24 / § 483.25 each patient must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental and psychosocial well-being, consistent with the patient's comprehensive assessment and plan of care;
- (g) 42 C.F.R. § 483.25 (b)(i) / (ii) / § 483.25 (c)(1)(2) Based on the comprehensive assessment of a resident, the facility must ensure that (i) A resident receives care, consistent with professional standards of practice, to prevent pressure ulcers and does not develop pressure ulcers unless the



individual's clinical condition demonstrates that they were unavoidable; and (ii) A resident with pressure ulcers receives necessary treatment and services, consistent with professional standards of practice, to promote healing, prevent infection and prevent new ulcers from developing.

- (h) 42 C.F.R. § 483.25 (d)(2) / § 483.25 (h)(2) each patient receives adequate supervision and assistance devices to prevent accidents;
- (i) 42 C.F.R. § 483.35 (a) / § 483.30(a)(1) the facility must provide services by sufficient number of each of the following types of personnel on a twenty-four (24) hour basis to provide nursing care to all patients in accordance with patient care plans; and
- (j) 42 C.F.R. § 483.70 (b) / § 483.75 (b) The facility must operate and provide services in compliance with all applicable Federal, State, and local laws, regulations, and codes, and with accepted professional standards and principles that apply to professionals providing services in such a facility.

114. Geraldine E. Wiggins fell within the class of persons the statutory rules, regulations and laws that were intended to protect by virtue of OBRA Regulations and the Pennsylvania Code 28 §§ 201, *et. seq.*, thus entitling Plaintiff to adopt such laws as the standard of care for measuring Defendants' conduct. Thus, Plaintiff asserts a claim for negligence *per se*, asserting that, as a matter of law, the conduct of the Defendants amounted to negligence and negligence *per se*.

115. At all relevant times pertinent hereto, there was in full force and effect 18 Pa.C.S.A. § 2713 "Neglect of Care Dependent Person", providing penal consequences for neglect of a care-dependent person for:

*Intentionally, knowingly or recklessly causes bodily injury or serious bodily injury by failing to provide treatment, care, goods or services necessary to preserve the health, safety or welfare of a care-dependent person for whom he is responsible to provide care.*

116. 18 Pa.C.S.A. § 2713 "Neglect of Care Dependent Person" expresses the fundamental public policy of the Commonwealth of Pennsylvania that older adults, like children, are not to be abused or neglected, particularly in health care facilities or by persons holding themselves out as trained professionals, and that if such neglect or abuse causes injury, either physical or mental, then such conduct is actionable.

117. At all relevant times pertinent thereto, Geraldine E. Wiggins was a care-dependent resident at Defendants' facility and as such, fell within the class of persons 18 Pa.C.S.A. §2713 "Neglect of Care

Dependent Person” was intended to protect, and as such, entitling Plaintiff to adopt 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” as the standard of care for measuring the conduct of the Defendants.

118. Furthermore, 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” is directed to obviate the specific kind of harm which Geraldine E. Wiggins sustained, with its purpose, at least in part, to protect the interest of a group of individuals, i.e., *care-dependent persons*, including Geraldine E. Wiggins.

119. Defendants, in accepting the responsibility for providing for Geraldine E. Wiggins’ care, welfare and well-being, as mentioned herein, and were negligent *per se* as they violated 18 Pa.C.S.A. § 2713 “Neglect of Care Dependent Person” in that they failed to provide treatment, care, goods and services necessary to preserve the health, safety or welfare of Geraldine E. Wiggins, for whom they were responsible to provide care as specifically set forth in this Fourth Amended Complaint.

120. As a direct result of the Defendants’ aforementioned negligence *per se*, Geraldine E. Wiggins was caused to suffer serious injuries as aforesaid.

121. The conduct of the Defendants was intentional, outrageous and willful and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

122. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demands judgment in her favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT II – VICARIOUS LIABILITY**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

**v.**

**REHABILITATION CENTER AT BRETHERN VILLAGE, LLC, BRETHERN VILLAGE,**  
**BRETHERN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4**

123. Plaintiff incorporates by reference herein the allegations contained in the receding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

124. At all times relevant hereto, Defendants’ agents, servants, employees and others were acting in the scope of their employment as agents, servants or employees of Defendants’ Facility.



125. Defendants are vicariously liable for the acts, commissions or omissions, of their physicians, nurses, nurses' aides and other medical personnel and healthcare providers fully as though the aforementioned physicians, nurses, nurses' aides and other medical personnel and healthcare providers performed the acts or omissions themselves. In the alternative, the Defendants are responsible for the negligent acts or omissions of other physicians, nurses, nurses' aides and other healthcare providers who are agents, employees and/or servants of the Defendants.

126. At all times relevant to this lawsuit, the Defendants, employed and directed physicians, nurses, nurses' aides and other medical personnel who rendered care to Geraldine E. Wiggins.

127. At all times relevant to this lawsuit, Defendants owed a duty to Geraldine E. Wiggins to provide competent and qualified physicians, surgeons, nurses and other quasi-medical personnel to render care to her.

128. At all times relevant to this lawsuit, the Defendants owed to Geraldine E. Wiggins the duty to operate their Facility in a careful and reasonable manner, under the circumstances, as would have been done by other similar facilities in and about the Pennsylvania area.

129. At all times relevant to this lawsuit, the Defendants and their agents, owed Geraldine E. Wiggins the duty to possess and exercise that degree of skill and knowledge ordinarily possessed and exercised by similar facilities, physicians and/or nurses in and about the Pennsylvania area.

130. At all times relevant to this lawsuit, Geraldine E. Wiggins' care was to be delivered and administered by the agents, servants and/or employees of the Defendants at the Defendants' Facility in a reasonably safe and prudent manner within the applicable standards of care for the community Commonwealth of Pennsylvania and federal nursing home facility rules and regulations.

131. The Defendants breached their duties and were, therefore, negligent, careless and exhibited a reckless disregard to the health, safety, welfare and well-being of Geraldine E. Wiggins.

132. The aforesaid breaches of duties, negligence, carelessness and recklessness of the Defendants directly and proximately caused the aforesaid injuries to Geraldine E. Wiggins, including, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion

from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

133. In causing the aforesaid injuries, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

134. The conduct of the Defendants was intentional, outrageous, willful and wanton, and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

135. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demands judgment in her favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT III - CORPORATE LIABILITY**

**BRENDA L. KLING, ADMINISTRATRIX OF  
THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

**v.**

**REHABILITATION CENTER AT BRETHERN VILLAGE, LLC, BRETHERN VILLAGE  
REALTY, LLC and JOHN DOES 1-4**

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136. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

137. Defendants' agents, employees, and servants and others provided care and treatment to Geraldine E. Wiggins as agents, employees, servants, officers or directors of Defendants or apparent agents held out as such.

138. At all times relevant hereto, Defendants' agents, servants, employees and others were acting in the scope of their employment as agents, servants, or employees of said Defendants.

139. At all relevant times pertinent hereto, the corporate conduct of the Defendants was independent of the negligent conduct of the employees, and was outrageous, willful, and wanton, and exhibited a reckless indifference to the health, welfare and well-being of Decedent.

140. Defendants, as corporate entities, are liable based on the following duties of care owed to Geraldine E. Wiggins:



- a) a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment;
- b) a duty to select and retain only competent physicians;
- c) a duty to oversee all persons who practice medicine within its walls as to patient care; and,
- d) a duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients.

141. Defendants owed Geraldine E. Wiggins a duty concerning the care and treatment under a corporate negligence standard with regard to the policies, actions and inactions of the institution itself and are directly liable for their own negligence.

142. Defendants and their corporate members, managers, partners, owners, and directors breached their duties and were, therefore, negligent, careless and reckless in their duties and obligations to Geraldine E. Wiggins.

143. The aforesaid breaches of duties, corporate negligence, carelessness and recklessness of Defendants directly and proximately caused the aforesaid injuries to Decedent, including but not limited to, experience, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scarring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

144. In causing the aforesaid injuries, Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.

145. The conduct of the Defendants was intentional, outrageous, willful and wanton and exhibited a reckless indifference to the health, safety and well-being of Geraldine E. Wiggins.

146. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demands judgment in her favor and against all Corporate Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT IV -SURVIVAL CLAIM**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

v.

**REHABILITATION CENTER AT BRETHERN VILLAGE, LLC, BRETHERN VILLAGE,**  
**BRETHERN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4**

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147. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

148. Plaintiff, Brenda L. Kling, Administratrix of the Estate of Geraldine E. Wiggins, deceased, also brings this action on behalf of the Estate of Geraldine E. Wiggins, deceased, under and by virtue of the Act of 1972, June 30, P.L. 508, No. 164, Section 2, eff. July 1972, as amended, 20 Pa.C.S.A. 3371, et seq., (known as the Pennsylvania Survival Act”).

149. Plaintiff, Brenda L. Kling, as daughter and Administratrix of the Estate of Geraldine E. Wiggins, deceased, is a survival claim beneficiary.

150. Plaintiff, Brenda L. Kling, as Administratrix of the Estate of Geraldine E. Wiggins, deceased, also claims on behalf of the Estate of Geraldine E. Wiggins, deceased, all damages recoverable under the Pennsylvania Survival Act, including, but not limited to damages for the conscious pain and suffering undergone by Decedent, up to and including the time of her death, which was caused by the Defendants’ breach of duties, negligence, carelessness, and recklessness.

151. Plaintiff claim damages for the fright and mental suffering attributable to the peril leading to the physical manifestation of mental and physical injuries experience, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scaring and disfigurement, loss of life’s pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

152. In causing the aforesaid injuries, the Defendants knew, or should have known, that Geraldine E. Wiggins would suffer such harm.



153. As a result of the death of Geraldine E. Wiggins, her Estate has been deprived of the economic value of the Decedent's life during the period of her life expectancy and Plaintiff, as Administratrix of the Estate of Geraldine E. Wiggins, deceased, claim damages for pecuniary loss sustained by the Estate as a result of her death, as well as for the conscious pain and suffering undergone by Decedent, up to and including the time of her death.

154. The conduct of the Defendants was intentional, outrageous, willful, wanton and exhibited a reckless indifference to the safety, health, welfare, and well-being of Geraldine E. Wiggins.

155. The conduct of the Defendants was such that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demands judgment in her favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT V - WRONGFUL DEATH CLAIM**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

v.

**REHABILITATION CENTER AT BRETHREN VILLAGE, LLC, BRETHREN VILLAGE,  
BRETHREN VILLAGE REALTY, LLC, LORI SCHNOENER, NHA and JOHN DOES 1-4**

156. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

157. Plaintiff also brings this action on behalf of Decedent's estate under and by virtue of the Act of 1855 P.L. 30, as amended, Pa.R.C.P. 2202, as further amended, July 1976, 42Pa.C.S.A. 8301 (known as the "Pennsylvania Wrongful Death Act").

158. Plaintiff, Brenda L. Kling, as daughter and Administratrix of the Estate of Geraldine E. Wiggins, deceased, is a wrongful death beneficiary.

159. Plaintiff claims all damages recoverable under the Pennsylvania Wrongful Death Act, including, but not limited to damages for pecuniary loss suffered by Decedent's survivors by reason of the death of Geraldine E. Wiggins, as well as for the reimbursement for medical expenses, nursing expenses, funeral expenses, expenses of administration and other expenses incurred in connection therewith.

160. As a result of the death of Geraldine E. Wiggins, the aforesaid survivors have been deprived of the comfort, aid, assistance, tutelage, maintenance, and companionship that they would have received from Decedent for the remainder of her natural life.

**WHEREFORE**, Plaintiff demands judgment in her favor and against the Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT VI- BREACH OF FIDUCIARY DUTY**  
**BRENDA L. KLING, ADMINISTRATRIX OF**  
**THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

v.

**REHABILITATION CENTER OF BRETHREN VILLAGE, LLC**

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161. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

162. At all times material and relevant hereto, Geraldine E. Wiggins was incapable of dealing with the facility, Brethren Village, on equal terms, and was incapable of engaging in any arm's length relationship with them.

163. Additionally, at all times material and relevant hereto, Geraldine E. Wiggins was incapable of independently providing for her own safety, health, welfare and well-being and justifiably relied on the Facility to provide necessary care and services to attain and/or maintain her highest practicable physical, mental and psychosocial well-being.

164. At all times material and relevant hereto, the Facility individually and/or collectively fostered and forged a relationship of special confidence and trust with Geraldine E. Wiggins by admitting her into their care on April 13, 2021, and by reserving the right to specifically determine the level of care, safety, protection, services and supplies that would be provided to Geraldine E. Wiggins.

165. At all times material and relevant hereto, the Facility individually and/or collectively controlled and oversaw every single aspect of Geraldine E. Wiggins's existence, including her activities of daily living (ADL), custodial care, as well as skilled nursing and healthcare.

166. At all times material and relevant hereto, the facility individually and/or collectively determined and orchestrated the most trivial as well as the most vital aspects of Geraldine E. Wiggins's



existence, from the type of clothing she wore, to when and how she received healthcare, as well as quality and quantity of food and water she could consume.

167. As a result, Geraldine E. Wiggins was solely and entirely dependent upon the Facility's staff, employees, agents, officers and directors, to provide for her basic daily care, skilled nursing and healthcare, services, safety, protection, well-being and personal and intimate needs.

168. Geraldine E. Wiggins reposed a special confidence into the Facility's staff, employees, agents, officers and directors to provide her with necessary care and services to attain and/or maintain her highest practicable physical, mental, and psychosocial well-being.

169. At all times material hereto, the Facility developed a special relationship with Geraldine E. Wiggins by virtue of the type of the care and services she required, their supposedly superior knowledge, skill and expertise, and their overmastering dominance over Geraldine E. Wiggins and by virtue of Geraldine E. Wiggins's weakness, dependence and inability to independently provide for her own safety, health, welfare and well-being and her justifiable reliance on the Facility to provide for her safety, health, welfare and well-being.

170. In their special relationship with one another, Geraldine E. Wiggins, a vulnerable and dependent individual, did not and could not deal with the Facility on equal terms due to the Facility's overmastering dominance on one side, and due to Geraldine E. Wiggins's weakness and justifiable trust on another side.

171. At all times material hereto, Geraldine E. Wiggins entrusted her care, treatment, as well as every single aspect of her very existence into the exclusive care, custody and control of the Facility and its staff, employees, agents, officers and directors.

172. At all times material hereto, the aforementioned special relationship enabled the facility to occupy a position of confidence regarding Geraldine E. Wiggins requiring fidelity, loyalty and scrupulous fairness and good faith on the part of the Facility.

173. The aforementioned special relationship further required the Facility to refrain from using its position to Geraldine E. Wiggins's detriment and the facility's own advantage.

174. As such, and at all times material hereto, the facility, Rehabilitation Center at Brethren Village, LLC, was a fiduciary of Geraldine E. Wiggins.

175. At all times material hereto, the Facility owed a fiduciary duty to Geraldine E. Wiggins.

176. The Facility breached its fiduciary duty and its fiduciary obligations, as well as violated its relationship of trust and special confidence owed to Geraldine E. Wiggins by: a) engaging in the conduct set forth in detail in the within Fourth Amended Complaint; and b) allowing revenues, profits and assets obtained from the Facility's patients as well as their payor sources for inflated, improper and unreasonable inter-company fees and transfers designed and created for the benefit of the facility's owners, parent companies, affiliates and the Defendants herein, instead of utilizing said resources effectively and efficiently in order to maintain and/or attain the highest practicable physical, mental and psychosocial well-being of the Facility's residents, including Geraldine E. Wiggins.

177. In their dealings with Geraldine E. Wiggins, as described herein, the Facility acted in bad faith, and used its position of trust and special confidence to their own advantage and to Geraldine E. Wiggins's detriment.

178. In violating its fiduciary duties and obligations to Geraldine E. Wiggins, the Facility knew or should have known, that Geraldine E. Wiggins would suffer harm.

179. The conduct of the Facility was intentional, outrageous, willful, wanton and exhibited a reckless indifference to the safety, health, welfare and well-being of Geraldine E. Wiggins.

180. The conduct of the Facility was such, that an award of punitive damages is justified.

*WHEREFORE*, Plaintiff demands judgment in her favor and against Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**COUNT VII – CORPORATE DEFENDANTS AIDING AND ABETTING BREACH OF  
FIDUCIARY DUTY**

**BRENDA L. KLING, ADMINISTRATRIX OF  
THE ESTATE OF GERALDINE E. WIGGINS, DECEASED**

**v.**

**BRETHREN VILLAGE, BRETHREN VILLAGE REALTY, LLC, JOHN DOES 1-4**

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181. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

182. Corporate Defendants knew, or should have known, of Geraldine E. Wiggins's fiduciary relationship with the Facility, Rehabilitation Center at Brethren Village, LLC, by virtue of the type of the care and services she required, the supposedly superior knowledge, skill and expertise, and their overmastering dominance over Geraldine E. Wiggins, and by virtue of Geraldine E. Wiggins' weakness, dependence and inability to independently providing for her own safety, health, welfare and well-being and is justifiable reliance on the Facility to provide for her safety, health, welfare and well-being.

183. Corporate Defendants knowingly participated in and provided substantial assistance and encouragement to the Facility in connection with the facility's breach of their fiduciary duties and obligations to Geraldine E. Wiggins, as set forth in detail in Count VI of this Fourth Amended Complaint.

184. Corporate Defendants knew, or should have known, that the facility's residents, including Geraldine E. Wiggins, were incapable of independently providing for their own care, safety and well-being, and were justifiably relying on, and solely depending upon the Facility's staff, employees, agents, officers and directors to provide for the basic daily and custodial care, skilled nursing and healthcare services, safety, welfare and well-being.

185. Additionally, Corporate Defendants knowingly assisted, encouraged, aided and abetted the Facility in its breach of fiduciary duties and obligations to the Facility's residents, including Geraldine E. Wiggins, by: a) engaging in the conduct set forth in detail in this Fourth Amended Complaint; b) exercising complete and total control over the Facility's revenues by regularly and repeatedly sweeping nearly all of the Facility's revenues into corporate account under exclusive control of the Corporate Defendants and/or their designee; c) knowingly and intentionally creating and accepting inter-company fees and transfers consisted of revenues derived from the Facility's patients and their payor sources, and designed to improperly and unjustly enrich the Corporate Defendants, instead of allowing the Facility to utilize its resources effectively and efficiently to allow the Facility's patients, including Geraldine E. Wiggins, to attain and/or maintain their highest practicable physical, mental and psychosocial well-being; d) structuring

181. Plaintiff incorporates by reference herein the allegations contained in the preceding paragraphs of this Fourth Amended Complaint as though same were fully set forth at length herein.

182. Corporate Defendants knew, or should have known, of Geraldine E. Wiggins's fiduciary relationship with the Facility, Rehabilitation Center at Brethren Village, LLC, by virtue of the type of the care and services she required, the supposedly superior knowledge, skill and expertise, and their overmastering dominance over Geraldine E. Wiggins, and by virtue of Geraldine E. Wiggins' weakness, dependence and inability to independently providing for her own safety, health, welfare and well-being and is justifiable reliance on the Facility to provide for her safety, health, welfare and well-being.

183. Corporate Defendants knowingly participated in and provided substantial assistance and encouragement to the Facility in connection with the facility's breach of their fiduciary duties and obligations to Geraldine E. Wiggins, as set forth in detail in Count VI of this Fourth Amended Complaint.

184. Corporate Defendants knew, or should have known, that the facility's residents, including Geraldine E. Wiggins, were incapable of independently providing for their own care, safety and well-being, and were justifiably relying on, and solely depending upon the Facility's staff, employees, agents, officers and directors to provide for the basic daily and custodial care, skilled nursing and healthcare services, safety, welfare and well-being.

185. Additionally, Corporate Defendants knowingly assisted, encouraged, aided and abetted the Facility in its breach of fiduciary duties and obligations to the Facility's residents, including Geraldine E. Wiggins, by: a) engaging in the conduct set forth in detail in this Fourth Amended Complaint; b) exercising complete and total control over the Facility's revenues by regularly and repeatedly sweeping nearly all of the Facility's revenues into corporate account under exclusive control of the Corporate Defendants and/or their designee; c) knowingly and intentionally creating and accepting inter-company fees and transfers consisted of revenues derived from the Facility's patients and their payor sources, and designed to improperly and unjustly enrich the Corporate Defendants, instead of allowing the Facility to utilize its resources effectively and efficiently to allow the Facility's patients, including Geraldine E. Wiggins, to attain and/or maintain their highest practicable physical, mental and psychosocial well-being; d) structuring



the managing and operating business model for the Facility in such a way that constrained the Facility's ability to provide the adequate and necessary care and services to their residents, including Geraldine E. Wiggins, while simultaneously benefiting and enriching the pyramid structure corporate entities; e) overseeing, managing, and controlling the Facility's acceptance of reimbursement from residents, including Geraldine E. Wiggins, knowing that the Facility could not provide full value of the care and services to meet the care and safety needs of their residents, including Geraldine E. Wiggins; f) drafting, structuring and approving contracts between the Facility and Defendants, which the Defendants knew, or should have known, would result in diversion and depleting of the facility revenues, necessary to provide the care and services to and meet the needs of their residents, including Geraldine E. Wiggins.

186. The aforementioned conduct of the Defendants constitutes knowing and intentional aiding and abetting the Facility's breach of their fiduciary duties and obligations to the Facility's residents, including Geraldine E. Wiggins, and subjects Corporate Defendants to liability for the injuries and harm suffered by Geraldine E. Wiggins, as aforesaid.

187. In adding and abetting the Facility in their breach of fiduciary duties and obligations to Geraldine E. Wiggins, as aforesaid, Corporate Defendants knew, or should have known, that Geraldine E. Wiggins would suffer harm.

188. As a result of Corporate Defendants' aiding and abetting the Facility's breach of their fiduciary duties and obligations to the Facility's residents, including Geraldine E. Wiggins, Corporate Defendants were improperly and unjustly enriched, their Facility, Rehabilitation Center at Brethren Village, LLC, was left with inadequate staff and resources to provide for the care and meet the needs of the Facility's residents, including Geraldine E. Wiggins, and Geraldine E. Wiggins suffered foreseeable and avoidable injuries set forth herein, and more specifically, experience, a fall, hematoma to skull, head laceration, fractures, functional deficits related to decrease range of motion from cervical collar, failure to thrive, severe pain and suffering, loss of enjoyment of life, scarring and disfigurement, loss of life's pleasures, medical expenses and related costs, embarrassment, humiliation, anxiety, depression and permanent physical, bodily and emotional injuries and death.

189. The conduct of Corporate Defendants was intentional, outrageous, willful, wanton and exhibited a reckless indifference to the safety, health, welfare and well-being of Geraldine E. Wiggins.

190. The conduct of Corporate Defendants was such, that an award of punitive damages is justified.

**WHEREFORE**, Plaintiff demands judgment in her favor and against Corporate Defendants, for compensatory damages and punitive damages, in a sum in excess of the arbitration limits.

**ROSENBAUM & ASSOCIATES, P.C.**

Dated: December 22, 2022

BY: /s/ Andrei Govorov  
Andrei Govorov, Esquire  
Counsel for Plaintiff



**VERIFICATION**

I verify that the statements made in the foregoing Fourth Amended Complaint are true and correct to the best of my knowledge, information and belief. I understand that false statements therein are made subject to the penalties of 18 Pa.C.S. Section 4904, relating to unsworn falsification to authorities.

**ROSENBAUM & ASSOCIATES, P.C.**

Dated: December 22, 2022

**BY:** /s/ Andrei Govorov  
Andrei Govorov, Esquire  
Counsel for Plaintiff

## EXHIBIT B



## SUPPLEMENTAL STAFFING AGREEMENT

This Supplemental Staffing Agreement ("Agreement") is entered into the 22nd day of September, 2020 by and between Brethren Village Retirement Community, with its physical address at 3001 Lititz Pike in Lititz, PA 17543 ("Client"); and NurSelect, LLC, a Pennsylvania business with its administrative offices located at 630 Freedom Business Center Drive, Third Floor, King of Prussia, PA 19406 ("NurSelect").

### RECITALS

A. NurSelect is a health care employment service engaged in the business of recruiting and placing qualified nursing personnel, such as, certified nursing assistants, licensed practical nurses, and registered nurses (collectively, "NurSelect Personnel") on contractual assignments on a per-diem or temporary basis (the "Services").

B. The Client desires NurSelect, and NurSelect agrees, upon the terms and conditions more fully set forth herein, to provide NurSelect Personnel to the Client to perform the Services.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

### ARTICLE I – THE SERVICES; NURSELECT PERSONNEL

1.1 Staffing; Services. Upon receipt of a request by the Client for NurSelect Personnel, and according to the availability of the requested NurSelect Personnel, NurSelect will provide the NurSelect Personnel to the Client, from time to time, at the locations requested, to provide the Services in a quantity and with the qualifications specified by the Client in said request. Services will be provided by NurSelect Personnel that (a) meet the highest professional standards and principles applicable to Services; and (b) shall be provided timely in accordance with the needs of the patient receiving the Services. Services shall be provided: (x) in accordance with federal, state and local laws, rules, ordinances and regulations; and (y) consistent with the policies and procedures of Client. Neither NurSelect, nor NurSelect Personnel shall do or omit to do anything that would jeopardize the licensure of the Client or its participation in governmental health programs, including Medicare and Medicaid.

1.2 Licensure and Certification of NurSelect Personnel. All NurSelect Personnel shall, at all times while performing the Services, have the appropriate nursing licenses, certifications and/or clinical experience, background checks, reference checks and any other certification or document required by law to provide the Services. From time to time, the Client may notify NurSelect of its need for NurSelect Personnel who possess a specialized certification and/or who have particular clinical experience to provide specialized services. Subject to the terms and conditions of this Agreement, NurSelect will provide NurSelect Personnel having the appropriate licenses, certification, and/or clinical experience required by applicable law to perform such specialized services. NurSelect shall keep and make available to the Client, upon written request by the Client, all licenses, certifications and other documentation verifying clinical experience and/or such other specification needed to furnish any of the Services. NurSelect shall comply with 28 Pa. Code Section 201.21.













ARTICLE II – PAYMENT FOR SERVICES







#### ARTICLE III - STATUS OF THE PARTIES

3.1 NurSelect Employees. It is expressly understood and agreed that all NurSelect Personnel shall not be considered employees or agents of the Client but instead shall be considered leased employees of NurSelect. Further, it is expressly understood and agreed by the parties that nothing contained in this Agreement shall be construed to create a joint venture, partnership, association or other affiliation or like relationship between the parties hereto, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. NurSelect shall be solely responsible for paying NurSelect Personnel and providing NurSelect Personnel with employment benefits, if any, offered by NurSelect. NurSelect shall be solely responsible for providing unemployment insurance and workers compensation benefits to NurSelect Personnel. NurSelect shall be solely responsible to handle all unemployment and workers compensation claims involving NurSelect Personnel.

3.2 No Claims for Certain Benefits. NurSelect and its NurSelect Personnel shall not have any claim under this Agreement or otherwise against the Client for employee benefits offered by the Client to its employees, including, without limitation, vacation pay, paid sick leave, retirement benefits, social security, workers compensation, health, disability, or professional malpractice benefits of any kind. NurSelect will indemnify and hold the Client harmless from any and all claims and liability arising from claims relating to the failure of the Client to provide any such benefits to any NurSelect Personnel.

3.3 No Claims for Withholding. The Client shall not withhold, on behalf of NurSelect or any NurSelect Personnel, any sums for income tax, unemployment insurance, social security or other withholding pursuant to any applicable law or requirement of any governmental body. NurSelect shall solely be responsible for all required withholdings from NurSelect Personnel wages and for remitting the same to the applicable governmental and other parties. NurSelect shall indemnify and hold the Client harmless from any and all claims and/or liability arising from claims relating to the Client's failure to make any such withholdings on behalf of NurSelect or any NurSelect Personnel.



ARTICLE IV - INSURANCE



4.2 Proof of Insurance. NurSelect shall, upon written request from the Client, provide to the Client certificates of insurance or other appropriate evidence of satisfaction of its obligations to maintain insurance as described in this Article. NurSelect agrees that it will notify the Client at least thirty (30) days in advance of cancellation, non-renewal, or adverse change in its insurance.

ARTICLE V - APPORTIONMENT OF LIABILITY AND DAMAGES INDEMNIFICATION

5.1 Apportionment of Liability. It is hereby stipulated and agreed between the Client and NurSelect that with respect to any claim or action arising out of the Services, each entity shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements or judgments resulting from negligence, actions or omissions of its own agents, officers, and employees.



ARTICLE VI - TERM AND TERMINATION

6.1 Term. The initial term of this Agreement shall commence on the date above first written ("Commencement Date") and shall continue for one (1) year from the Commencement Date ("Term"). Except as otherwise stated herein, the Term shall be automatically extended for one (1) additional year and so on from year to year until either NurSelect or the Client give to the other no less than thirty (30) days' written notice of termination prior to the end of the then-current Term.







ARTICLE VII - CONFIDENTIAL INFORMATION



ARTICLE VIII - NON-ENGAGEMENT COVENANT





ARTICLE IX - HEALTH INSURANCE PORTABILITY AND  
ACCOUNTABILITY ACT OF 1996 PROVISIONS











ARTICLE X - OTHER TERMS AND CONDITIONS







IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and date first written above.

CLIENT:

By: David Rayha  
Name: DAVID A. RAYHA NHA  
Title: VP OPERATION/COD

NURSELECT:

By: David E. Sherry  
Name: DAVID E. SHERRY  
Title: PRESIDENT

BRENDA L. KLING, individually and as : IN THE COURT OF COMMON PLEAS  
Administratrix of the Estate of : OF LANCASTER COUNTY,  
GERALDINE E. WIGGINS, : PENNSYLVANIA

Plaintiff

NO: CI-22-04128

v.

MedMal

REHABILITATION CENTER AT  
BRETHREN VILLAGE, LLC,  
BRETHREN VILLAGE, BRETHREN  
VILLAGE REALTY, LLC, LORI  
SCHOENER, NHA, and JOHN DOES1-  
4

Defendants,

v.

NURSELECT, LLC,

Additional  
Defendant.

VERIFICATION

I verify that the statements made in the attached Third-Party Joinder Complaint are true  
and correct to the best of my knowledge, information, and belief. I understand that the  
statements therein are subject to the penalties of 18 Pa.C.S. § 4904.

Date: June 13, 2023

By: John Snader  
John Snader, FACHE  
President/CEO Brethren Village



DATE: 8/25/23  
WRIT RE-ISSUED  
ANDREW E. SPADE  
PROTHONOTARY

RECEIVED  
2023 AUG 28 AM 11:49  
CLERK OF COURT  
LANC. CO. PA

**RE: Ayanna McDowell**

David Shelly  
kas@saxtonstump.com  
Fri, Oct 14, 2022, 3:09 PM

Hi Kim, here is the last known contact information we have on file for Ayanna. Please let me know if you need anything else. Thank you.

Cell: 267-836-2086  
Email: ayannamcdowell@aol.com  
Address: 2836 Lincoln Hwy, E-2, Ronks, PA 17572

Sincerely,

David Shelly, President  
**NurSelect, LLC**  
630 Freedom Business Center Dr.  
Third Floor  
King of Prussia, PA 19406  
Main: (800) 484-8572  
Direct: (484) 663-4374  
Fax (484) 214-0055  
[nurselectstaffing.com](http://nurselectstaffing.com)



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Kimberly A. Selemba



David Shelly

Fri, Oct 14, 2022, 3:14 PM

Thank you, Dave. Can you also please send over the statement that Ayanna prepared?

Thanks again,

Kim

---

David Shelly

Kimberly A. Selemba

Thu, Oct 20, 2022, 12:41 PM

AM Statement[196247].pdf

Hi Kim, please find the requested statement attached. Thanks.

Sincerely,

David Shelly, President

**NurSelect, LLC**

630 Freedom Business Center Dr.

Third Floor

King of Prussia, PA 19406

Main: (800) 484-8572

Direct: (484) 663-4374

Fax (484) 214-0055

[nurselectstaffing.com](http://nurselectstaffing.com)



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3 Emails

**From:** [AYANNA MCDOWELL](#)

**Sent:** Wednesday, May 12, 2021 4:10 PM

**To:** [Melissa Reilly](#)

**Subject:** Statement

I walked in and got report from the aide of her telling me the resident was on the toilet. I went to check her because the other aide was in the resident room assisting her getting dress. So I washed up the resident and set her up to brush her teeth and was going to be right back just was gonna answer his bell and he needed to use the urinal. So when I gave him the urinal I said ring the bell when you're done. As I went over to the aide cause she was still in the resident room. I said we need to get Johanna up when you're done. So when I was bout to go back in Geraldine room the nurse Derrick asked me to go get the resident down the hall up and he was putting his breakfast order in and his sugar was low. So after I did what the nurse asked me to do I walked back to Geraldine room and that's when I seen the aide picking her up and putting her in the chair and I walked in asking what happen she said she rang for help. And then I seen she was bleeding and told the supervisor

Sent from my iPhone

---





## SUPPLEMENTAL STAFFING AGREEMENT

This Supplemental Staffing Agreement ("Agreement") is entered into the 22nd day of September, 2020 by and between **Brethren Village Retirement Community**, with its physical address at **3001 Lititz Pike in Lititz, PA 17543** ("Client"); and NurSelect, LLC, a Pennsylvania business with its administrative offices located at 630 Freedom Business Center Drive, Third Floor, King of Prussia, PA 19406 ("NurSelect").

### RECITALS

A. NurSelect is a health care employment service engaged in the business of recruiting and placing qualified nursing personnel, such as, certified nursing assistants, licensed practical nurses, and registered nurses (collectively, "**NurSelect Personnel**") on contractual assignments on a per-diem or temporary basis (the "**Services**").

B. The Client desires NurSelect, and NurSelect agrees, upon the terms and conditions more fully set forth herein, to provide NurSelect Personnel to the Client to perform the Services.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

### ARTICLE I – THE SERVICES; NURSELECT PERSONNEL

1.1 Staffing; Services. Upon receipt of a request by the Client for NurSelect Personnel, and according to the availability of the requested NurSelect Personnel, NurSelect will provide the NurSelect Personnel to the Client, from time to time, at the locations requested, to provide the Services in a quantity and with the qualifications specified by the Client in said request. Services will be provided by NurSelect Personnel that (a) meet the highest professional standards and principles applicable to Services; and (b) shall be provided timely in accordance with the needs of the patient receiving the Services. Services shall be provided: (x) in accordance with federal, state and local laws, rules, ordinances and regulations; and (y) consistent with the policies and procedures of Client. Neither NurSelect, nor NurSelect Personnel shall do or omit to do anything that would jeopardize the licensure of the Client or its participation in governmental health programs, including Medicare and Medicaid.

1.2 Licensure and Certification of NurSelect Personnel. All NurSelect Personnel shall, at all times while performing the Services, have the appropriate nursing licenses, certifications and/or clinical experience, background checks, reference checks and any other certification or document required by law to provide the Services. From time to time, the Client may notify NurSelect of its need for NurSelect Personnel who possess a specialized certification and/or who have particular clinical experience to provide specialized services. Subject to the terms and conditions of this Agreement, NurSelect will provide NurSelect Personnel having the appropriate licenses, certification, and/or clinical experience required by applicable law to perform such specialized services. NurSelect shall keep and make available to the Client, upon written request by the Client, all licenses, certifications and other documentation verifying clinical experience and/or such other specification needed to furnish any of the Services. NurSelect shall comply with 28 Pa. Code Section 201.21.

1.3 Immigration Documentation. NurSelect Personnel shall have proper documentation required for compliance with applicable immigration laws. NurSelect shall make available to the Client, upon written request, copies of such documentation.

1.4 Immunizations. NurSelect shall ensure that NurSelect Personnel are in compliance with the following immunization requirements: (a) immunization for tetanus; (b) demonstration of a negative skin test or chest x-ray for tuberculosis; (c) factual documentation of immunizations for measles, mumps, rubella and chicken pox; (d) immunization for Hepatitis B; and (e) certification for education on the blood borne pathogens standard and the TB standard. NurSelect shall make available to the Client, upon written request, copies of documentation evidencing compliance with the foregoing.

1.5 Criminal Background Checks. NurSelect conducts criminal background checks of all its employees prior to their employment with NurSelect. All NurSelect Personnel provided to the Client shall have passed a criminal background check satisfactory to the Client, and shall not have a criminal record which includes, but is not limited to, felony convictions or convictions for any crime involving moral turpitude, physical or sexual abuse, drug abuse or any other crime which would render NurSelect Personnel unfit for the Client's purposes. NurSelect shall provide the Client with copies of all criminal background checks for NurSelect Personnel upon written request.

1.6 HIPAA/Confidentiality Agreement. NurSelect will obtain require all NurSelect Personnel to execute and be bound by a HIPAA/Confidentiality Agreement and a Business Associate Agreement to endure all NurSelect Personnel observe the confidentiality and HIPAA provisions set forth in this Agreement. NurSelect will provide copies of such Agreements to Client upon request.

1.7 Anti-Kickback; Government Health Programs. NurSelect represents and warrants that it and its employees have not engage in, and during the Term, shall not engage in, any activities prohibited under the federal anti-kickback statute (Social Security Act Section 1128B, 42 U.S.C. Sections 1320a-7, 1320a-7a, 1320a-7b). NurSelect represents and warrants that it and its employees have not been excluded from the Medicare, Medicaid and/or other federal healthcare programs. In the event NurSelect or its employees is under investigation by the United States Department of Health and Human Services' Office of Inspector General for a claim or action that could result in the exclusion of NurSelect or its employees from the Medicare, Medicaid or other governmental health program, NurSelect shall promptly inform the Client but only after receiving sufficient information to substantiate the fact of the investigation.

1.8 Review of Documentation by the Client. The Client shall review documentation on the above requirements prior to the start date for NurSelect Personnel. In the event the Client is not satisfied with the said documentation, Client shall immediately inform NurSelect.

1.9 Compliance with the Client's Policies. The Client shall make available and explain to all NurSelect Personnel all applicable rules, regulations, procedures and policies pursuant to the Client's organization and operation of the Client, including, without limitation, rules, regulations, procedures and policies adopted by the Client's medical staff and nursing department (collectively, the "**Policies**"). The Client shall also be responsible to ensure that all NurSelect Personnel are promptly made aware of any updates or changes to the Policies. NurSelect Personnel providing the Services under this Agreement shall materially observe all Policies.



1.10 Replacement of NurSelect Personnel. If at any time the Client is dissatisfied with the service provided by any NurSelect Personnel, the Client shall notify NurSelect of its dissatisfaction, at which time, and upon receipt of such notice, NurSelect will make commercially reasonable efforts to promptly provide a replacement.

1.11 Meetings, Orientation and Training. The Client may, from time to time, require that the NurSelect Personnel attend staff meetings, receive training and/or undergo orientation related to the particular Services requested by the Client. NurSelect will bill the Client for the time NurSelect Personnel spend in staff or other Client meetings, and for time spent receiving training and orientation. Training and/or orientation shall be provided to the NurSelect Personnel at no cost to NurSelect, including, without limitation, the cost of any instructors in providing training.

1.12 Record Maintenance. NurSelect Personnel shall provide accurate and complete written documentation on individual patient charts, including treatment and progress notes, in accordance with the Client's requirements, the requirements of applicable federal and state governmental agencies and the requirements of third-party reimbursement sources such as insurers. NurSelect Personnel shall maintain accurate records of Services provided to the Client's patients in accordance with accepted professional standards and practices and the requirements of the Client.

1.13 Exclusion Checks. NurSelect shall, monthly during the term, check the Pennsylvania Medi-Check List maintained by the Pennsylvania Department of Public Welfare, the list of Excluded Individuals/Entities maintained by the Office of the Inspector General of the federal Department of Health and Human Services and the Excluded Parties List System maintained by the General Services Administration, to ensure that neither NurSelect, nor any NurSelect Personnel is included in any of the abovementioned lists. To the extent any NurSelect Personnel has worked in a state other than the Commonwealth of Pennsylvania, NurSelect will check state Medicaid exclusion databases (to the extent available) for such states where NurSelect Personnel worked. In the event NurSelect or any NurSelect Personnel are listed on any of the abovementioned lists, NurSelect will immediately notify the Client and remove such person or persons from providing Services to the Client.

1.14 Client Responsibilities.

a. Client will properly supervise NurSelect Personnel and shall be solely responsible for its business operations and practices, products, services and intellectual property.

b. Client will properly supervise, control and safeguard its premises, processes and systems, and shall not: (i) permit NurSelect Personnel to operate any vehicle or mobile equipment while providing Services; (ii) entrust with, or place NurSelect Personnel in charge of, unattended premises or facilities, cash, checks, keys, credit cards, merchandise or confidential or trade secret information, negotiable instruments or other valuables without NurSelect's express written consent, or unless otherwise set forth in the job description provided to NurSelect for particular Services to be provided by NurSelect Personnel.

c. Client shall provide NurSelect Personnel with a safe work environment and shall provide NurSelect Personnel with appropriate information, training and safety equipment with respect to any hazardous substances or conditions to which NurSelect Personnel may be exposed at the Client in connection with Services.

d. Client shall not alter, modify or otherwise change the job description for any NurSelect Personnel without first informing NurSelect and receiving NurSelect's written approval.

e. Client shall be solely responsible for billing its patients and/or their insurers or other third-party reimbursement sources for Services provided to such patients by NurSelect Personnel. NurSelect is not responsible for Client's inability to obtain payment in full or in part from its patients and/or their insurers or other third-party reimbursement sources.

f. Client shall have primary responsibility for maintaining all patient records. To the extent reasonably necessary to accomplish Services, Client shall make available to NurSelect Personnel all patient records necessary for the proper evaluation and treatment of its patients.

g. Client shall have the ultimate responsibility of ensuring that all Services provided hereunder: (i) shall meet applicable professional standards and principles; and (ii) be provided in a timely manner.

## ARTICLE II – PAYMENT FOR SERVICES

2.1 Invoices. NurSelect shall provide invoices to the Client on a weekly basis for the Services provided by NurSelect Personnel. The Client shall be billed at the hourly rates set forth in the Fee Schedule, attached hereto as Exhibit A and incorporated herein by reference. Invoices shall contain the following information: (i) the names of NurSelect Personnel providing Services; (ii) total applicable charges; (iii) dates and times worked by NurSelect Personnel; and (iv) such other information as the Client may reasonably request.

2.2 Payment for Services. The Client shall pay NurSelect for the Services of the NurSelect Personnel as reflected on such invoice within thirty (30) days of its receipt of said invoice. If payment is not received within such time, NurSelect reserves the right to add interest in the amount of one- and one-half percent (1.5%) per month to all outstanding balances remaining unpaid. In the event that payment for any invoice is not received within thirty (30) days of the date of such invoice, NurSelect may elect to terminate this Agreement immediately, without notice to the Client. Termination by NurSelect pursuant to this Section shall not relieve the Client of any obligation to pay any outstanding invoices. The Client agrees to pay all reasonable collection fees, including attorney and court fees, related to unpaid and uncured outstanding balances.

2.3 Rate Changes. NurSelect may, upon sixty (60) days' written notice to the Client, change the rates for the Services as set forth on Exhibit A. Said rate change shall become effective beginning on the sixty-first (61<sup>st</sup>) day after the said notice is provided to the Client.

2.4 Signatures of the Client's Personnel. The Client agrees and certifies that the signature of any of the Client's agents or employees on time slips of NurSelect Personnel is understood to be authorized by the Client and is binding upon the Client. The signature of any of the Client's agents or employees on any time slip conclusively certifies the Client's satisfaction with the Services performed and confirmation of the total number of hours worked.



2.5 Cancellation of Shifts. The Client agrees to notify NurSelect of all cancellations of shifts of NurSelect Personnel within a minimum of two (2) hours prior to the start of the scheduled shift of the affected NurSelect Personnel. If the Client fails to notify NurSelect of a shift cancellation within two (2) hours, the Client agrees to pay NurSelect the sum of two (2) hours' pay per NurSelect Personnel that was scheduled to work the cancelled shift at the applicable rate set forth in Exhibit A.

2.6 Holidays. NurSelect observes the following holidays: New Year's Day, Easter Sunday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve (2<sup>nd</sup> shift, only), Christmas Day and New Year's Eve (2<sup>nd</sup> shift, only). NurSelect will bill the Client 150% of the regular rate for all hours worked by NurSelect Personnel during any of the aforementioned holidays. For avoidance of confusion, holidays for night shift workers (typically from 11:00 PM to 7:00 AM) begin at 11:00 PM on the day immediately preceding the holiday.

2.7 Overtime. NurSelect Personnel are presumed to be non-exempt from laws requiring premium pay for overtime, holiday work or weekend work. In the event the Client requires NurSelect Personnel to work during holidays, overtime or weekends, and to the extent that federal or state law requires a premium to be paid to such NurSelect Personnel, NurSelect will invoice the Client at such premium for such time worked. By way of example, when federal or state law requires payment of 150% of the regular wage rate for work exceeding 40 hours per week, NurSelect will invoice the Client for 150% of its rate set forth on Exhibit A for such work exceeding 40 hours per week.

### ARTICLE III - STATUS OF THE PARTIES

3.1 NurSelect Employees. It is expressly understood and agreed that all NurSelect Personnel shall not be considered employees or agents of the Client but instead shall be considered leased employees of NurSelect. Further, it is expressly understood and agreed by the parties that nothing contained in this Agreement shall be construed to create a joint venture, partnership, association or other affiliation or like relationship between the parties hereto, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. NurSelect shall be solely responsible for paying NurSelect Personnel and providing NurSelect Personnel with employment benefits, if any, offered by NurSelect. NurSelect shall be solely responsible for providing unemployment insurance and workers compensation benefits to NurSelect Personnel. NurSelect shall be solely responsible to handle all unemployment and workers compensation claims involving NurSelect Personnel.

3.2 No Claims for Certain Benefits. NurSelect and its NurSelect Personnel shall not have any claim under this Agreement or otherwise against the Client for employee benefits offered by the Client to its employees, including, without limitation, vacation pay, paid sick leave, retirement benefits, social security, workers compensation, health, disability, or professional malpractice benefits of any kind. NurSelect will indemnify and hold the Client harmless from any and all claims and liability arising from claims relating to the failure of the Client to provide any such benefits to any NurSelect Personnel.

3.3 No Claims for Withholding. The Client shall not withhold, on behalf of NurSelect or any NurSelect Personnel, any sums for income tax, unemployment insurance, social security or other withholding pursuant to any applicable law or requirement of any governmental body. NurSelect shall solely be responsible for all required withholdings from NurSelect Personnel wages and for remitting the same to the applicable governmental and other parties. NurSelect shall indemnify and hold the Client harmless from any and all claims and/or liability arising from claims relating to the Client's failure to make any such withholdings on behalf of NurSelect or any NurSelect Personnel.



#### ARTICLE IV - INSURANCE

4.1 Insurance. NurSelect will purchase and maintain: (a) comprehensive general and professional liability insurance coverage with minimum limits of \$1,000,000 per occurrence and \$3,000,000; and (b) workers compensation insurance providing at least the minimum amount of coverage required by the Commonwealth of Pennsylvania. All policies shall be on a claim made basis and shall be placed with insurers licensed to do business in Pennsylvania.

4.2 Proof of Insurance. NurSelect shall, upon written request from the Client, provide to the Client certificates of insurance or other appropriate evidence of satisfaction of its obligations to maintain insurance as described in this Article. NurSelect agrees that it will notify the Client at least thirty (30) days in advance of cancellation, non-renewal, or adverse change in its insurance.

#### ARTICLE V - APPORTIONMENT OF LIABILITY AND DAMAGES INDEMNIFICATION

5.1 Apportionment of Liability. It is hereby stipulated and agreed between the Client and NurSelect that with respect to any claim or action arising out of the Services, each entity shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements or judgments resulting from negligence, actions or omissions of its own agents, officers, and employees.

5.2 Indemnification of Client. NurSelect agrees to indemnify and hold harmless the Client from and against any and all claims, demands, actions, settlements, or judgments, including reasonable attorneys' fees and litigation expenses, arising from: (a) NurSelect's breach of this Agreement; and (b) NurSelect Personnel's provision of the Services where such claims, demands, actions, settlements, or judgments arise from the negligence or willful misconduct of the NurSelect Personnel.

5.3 Indemnification of NurSelect. The Client agrees to indemnify and hold harmless NurSelect from and against any and all claims, demands, actions, settlements, or judgments, including reasonable attorneys' fees and litigation expenses where such claims, demands, actions, settlements, or judgments arise from the negligence or willful misconduct of the Client, its directors, officers, agents or employees.

#### ARTICLE VI - TERM AND TERMINATION

6.1 Term. The initial term of this Agreement shall commence on the date above first written ("**Commencement Date**") and shall continue for one (1) year from the Commencement Date ("**Term**"). Except as otherwise stated herein, the Term shall be automatically extended for one (1) additional year and so on from year to year until either NurSelect or the Client give to the other no less than thirty (30) days' written notice of termination prior to the end of the then-current Term.

6.2 Termination for Specific Breaches. Except as expressly provided elsewhere in this Agreement, in the event either party shall fail to satisfy its obligations under this Agreement, this Agreement may be terminated at the discretion of the non-breaching party by providing the breaching party with thirty (30) days' written notice notifying the breaching party of its breach and providing it with the opportunity to cure said breach ("**Termination Notice**"). If the breaching party fails to cure said breach within thirty (30) days of the Termination Notice, then this Agreement may, at the option of the non-breaching party, be terminated without any further notice from the non-breaching party on the thirty-first (31<sup>st</sup>) day after the date of the Termination Notice.

6.3 Survival of Obligations. Upon termination of this Agreement pursuant to the terms of this Article, neither party shall have any further obligation hereunder except for: (a) obligations accruing prior to the date of termination, and (b) obligations, promises, or covenants contained herein which are expressly made to extend beyond the date of termination. All indemnification obligations set forth herein shall survive the termination of this Agreement.

#### ARTICLE VII - CONFIDENTIAL INFORMATION

7.1 Non-disclosure of NurSelect's Confidential Information. NurSelect deems its methods and modes of operation, its performance hereunder, this Agreement and its client information to be confidential information ("**NurSelect's Confidential Information**"). The Client agrees not to disclose NurSelect's Confidential Information to outside parties except as required by law, and the Client shall disclose NurSelect's Confidential Information to Client personnel only on an as-needed basis with notice to the Client personnel of its confidential nature.

7.2 Non-disclosure of the Client's Confidential Information. The Client deems its methods and modes of operation, its performance hereunder, this Agreement and its patient information to be confidential information ("**Client's Confidential Information**"). NurSelect agrees not to disclose Client's Confidential Information to outside parties except as required by law and subject to the provisions of Article IX, and NurSelect shall disclose Client's Confidential Information to NurSelect Personnel only on an as-needed basis and with notice to such NurSelect Personnel of its confidential nature. Information obtained by NurSelect Personnel during the course of providing Services shall not be imputed to NurSelect. The Client shall require NurSelect Personnel to execute a confidentiality agreement between the Client and NurSelect Personnel to address the non-disclosure of the Client's Confidential Information by NurSelect Personnel.

#### ARTICLE VIII - NON-ENGAGEMENT COVENANT

8.1 Non-Solicitation of the Client's Employees. During the Term of this Agreement and for a period of one (1) year after its termination, NurSelect agrees it will not knowingly or directly solicit or encourage any of the Client's employees to discontinue their employment with the Client. NurSelect and the Client agree that any remedy at law for the breach of this Article shall be inadequate and that, in connection with such breach, the Client will be entitled, in addition to any other remedies, to temporary and permanent injunctive relief.

8.2 Non-Solicitation of NurSelect Employees. During the Term of this Agreement and for a period of one (1) year after its termination, the Client agrees it will not knowingly, directly or indirectly, solicit or encourage any NurSelect Personnel to discontinue his or her employment with NurSelect. The Client and NurSelect agree that any remedy at law for the breach of this Article shall be inadequate and that, in connection with such breach, NurSelect will be entitled, in addition to any other remedies, to temporary and permanent injunctive relief.

8.3 Employment of NurSelect Employees with Consent. Notwithstanding anything to the contrary herein, during the Term of this Agreement and for a period of one (1) year after its termination, the Client may hire any NurSelect Personnel with the prior written consent of NurSelect as either a "temporary-to-permanent" hire or as a "direct placement". If such consent is granted, the Client agrees to pay NurSelect the applicable amount set forth on the fee schedule attached hereto as Exhibit A within thirty (30) days from the date on which such NurSelect Personnel accepts employment with the Client.



ARTICLE IX – HEALTH INSURANCE PORTABILITY AND  
ACCOUNTABILITY ACT OF 1996 PROVISIONS

9.1 Definitions.

a. “Disclose” and “Disclosure” shall mean, with respect to Protected Health Information (defined herein), the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside of NurSelect’s internal operations.

b. “Protected Health Information” or “PHI” shall mean information, including demographic information, that (i) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; (ii) identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual); and (iii) is received by NurSelect from or on behalf of the Client, or is created by NurSelect in the performance of this Agreement, or is made accessible to NurSelect by the Client.

c. “Use” or “Uses” shall mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination, or analysis of Protected Health Information within NurSelect’s internal operations.

d. “Privacy Regulations” shall mean the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Parts 160 and 164.

9.2 Obligations of NurSelect. NurSelect shall not Use or Disclose PHI for any purpose except as provided in this Article. NurSelect:

a. shall Use and Disclose PHI as necessary or appropriate to perform the Services, as provided in this Article;

b. shall Disclose PHI to the Client upon request; and

c. may, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:

i. Use PHI; and

ii. Disclose PHI if the Disclosure is required by applicable law, or NurSelect obtains reasonable assurance from the person or entity to whom the information is Disclosed that the PHI will be held confidentially and Used or Disclosed only as required by law or for the purpose for which it was Disclosed to the person or entity, and such person or entity agrees to notify NurSelect of any instances of which the person or entity is or becomes aware in which the confidentiality of the PHI has been breached.

9.3 Adequate Safeguards for PHI. NurSelect warrants that it shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of PHI in any manner other than as permitted by this Article.



9.4 Reporting Non-Permitted Uses or Disclosure. In the event that any Use or Disclosure is made by NurSelect, its employees, representatives, agents, or subcontractors that is not specifically permitted by this Article, NurSelect shall report such Use or Disclosure to the Client. The initial report shall be made by telephone call to such employee or agent of the Client as the Client may designate (the "Privacy Officer") within forty-eight (48) hours from the time NurSelect becomes aware of any non-permitted Use or Disclosure, followed by a full written report to the Privacy Officer no later than ten (10) business days from the date NurSelect became aware of the non-permitted Use or Disclosure.

9.5 Availability of Internal Practices, Books, and Records to Government Agencies. NurSelect agrees to make its internal practices, books, and records relating to the Use and Disclosure of PHI available to the Secretary of the Federal Department of Health and Human Services for purposes of determining the Client's compliance with the Privacy Regulations. NurSelect shall immediately notify the Client of any requests made by the Secretary and provide the Client with copies of any documents produced in response to any such request.

9.6 Access to and Amendment of PHI. NurSelect shall: (a) make the PHI specified by the Client available to the individual(s) identified by the Client as being entitled to access and copy such PHI; and (b) make PHI available to the Client for the purpose of amendment and incorporation of such amendments into PHI, in compliance with applicable law. NurSelect shall provide such access and incorporate such amendments in compliance with applicable law within the time and in the manner specified by the Client.

9.7 Accounting of Disclosures. Upon the Client's request, NurSelect shall provide to the Client an accounting of each Disclosure of PHI made by NurSelect or its employees, agents, representatives, or subcontractors. Any accounting provided by NurSelect under this Paragraph shall include:

- a. the date of the Disclosure;
- b. the name and address, if known, of the person or entity receiving the PHI;
- c. a brief description of the PHI disclosed; and
- d. a brief statement of the purpose of the Disclosure.

For each Disclosure that could require an accounting pursuant to this Paragraph, NurSelect shall document the information specified in (a) through (d) above, and shall retain securely such documentation for six (6) years from the date of such Disclosure.

9.8 Termination Upon Breach of this Article. Notwithstanding anything herein to the contrary, in the event of a breach of the provisions of this Article by NurSelect, the Client shall have the right to terminate this Agreement immediately and without penalty upon delivery of written notice to NurSelect. NurSelect's obligations under this Article shall survive the termination or expiration of this Agreement. Additionally, termination by the Client pursuant to this Section shall not relieve the Client of any obligation to pay any outstanding invoices, including those relating to work performed by NurSelect before its receipt of the Client's notice of termination hereunder.

9.9 Disposition of PHI. Upon termination of this Agreement, NurSelect shall either return or destroy, in accordance with any instructions by the Client, all PHI in the possession or control of NurSelect or its agents and subcontractors, with the exception of any information retained pursuant to the accounting of

Disclosures provisions of Section 9.7 herein. If such return or destruction of PHI is not feasible, NurSelect may retain PHI provided that NurSelect (a) continues to comply with the provisions of this Article for as long as it retains PHI, and (b) limits further Uses and Disclosures of PHI to those purposes that make the return or destruction of PHI infeasible.

9.10 Use of Subcontractors and Agents. NurSelect shall require each of its agents and subcontractors that receive PHI from NurSelect to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Article.

9.11 Relationship to Other Provisions. In the event that any provision of this Article is contrary to any provision elsewhere in this Agreement, the provisions of this Article shall control.

#### ARTICLE X - OTHER TERMS AND CONDITIONS

10.1 Cooperation. The parties hereto agree to provide reasonable cooperation to each other and to provide reasonable assistance to each other in connection with the investigation and resolution of any complaints, claims, actions or proceedings that may be brought by or against NurSelect Personnel in connection with this Agreement and the provision of Services hereunder.

10.2 Non-Discrimination. All Services provided under this Agreement shall be provided without regard to the race, religion, ancestry, color, creed, sex, age, disability, handicap status, payor source or national origin of the patient requiring such Services. NurSelect and NurSelect Personnel shall comply with all applicable laws prohibiting discrimination.

10.3 Elder Justice Act. By signing this Agreement, NurSelect acknowledges its receipt of the Notice for Covered Individuals of Reporting Obligations under the Elder Justice Act, which is incorporated herein by reference. NurSelect shall be responsible to provide such Notice to all NurSelect Personnel.

10.4 Modification. This Agreement evidences the entire Agreement between the parties hereto and, except as expressly provided herein, may not be changed, altered, or modified in any manner unless such change is agreed to in writing by both the Client and NurSelect.

10.5 Choice of Law. This Agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with, the laws and in the courts of the Commonwealth of the Pennsylvania, without regard to its conflict of law's provisions.

10.6 Non-Waiver. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions herein.

10.7 Force Majeure. Neither party shall be held responsible for any delay or failure in performance under this Agreement arising out of causes beyond its control or without its fault or negligence. Such causes may include, but are not limited to, fires, strikes, acts of God, acts of terrorism or national disasters.

10.8 Severability. If any term or provision of this Agreement shall to any extent be deemed to be invalid or unenforceable, the remaining terms and provisions of the Agreement shall not be affected thereby, but each term and provision of the Agreement shall be valid and enforced to the fullest extent permitted by law.



10.9 Assignment. This Agreement is for the provision of personal, professional services and may not be assigned or transferred by either party without the prior written consent of the other.

10.10 Entire Agreement. This Agreement supersedes all previous contracts and constitutes the entire Agreement between the parties. Oral statements or prior written material not specifically incorporated herein shall be of no force and effect and no changes in or additions to this Agreement shall be recognized unless incorporated herein by amendment and executed by the parties hereto, such amendment(s) to be effective on the date stipulated therein.

10.11 Counterparts; Signature by Facsimile and E-mail Transmission. This Agreement and any amendment, restatement, or termination of any provision of this Agreement, may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto. A party's transmission by facsimile or by e-mail transmission of an Adobe Portable Document Format (also known as a PDF file) of a copy of this Agreement duly executed by that party shall constitute effective delivery by that party of an executed copy of this Agreement to the party receiving the transmission. A party that has delivered this Agreement by facsimile or e-mail transmission shall forthwith deliver an originally executed copy to the other party or parties.

10.12 Electronic Signatures. Any signature, whether it be electronic, digital or a .pdf copy of a manual signature, is intended to authenticate this Assignment and have the same effect as a manual or original signature.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and date first written above.

CLIENT:

By: David Rayha  
Name: DAVID G. RAYHA NHA  
Title: VP OPERATION/CDO

NURSELECT:

By: David E. Sherry  
Name: DAVID E. SHERY  
Title: PRESIDENT



**Sara Moriarty**

---

**From:** Kaster, Bryon <BKaster@dmclaw.com>  
**Sent:** Friday, November 8, 2024 3:34 PM  
**To:** Sara Moriarty  
**Cc:** Stabley, Michelle  
**Subject:** FW: Brenda L. Kling, Individually and as Administratrix of the Estate of Geraldine E. Wiggins v. Rehabilitation Center at Brethren Village, et al.  
**Attachments:** L. - David Shelly - President.pdf

Sara,

Below is the original January 12, 2023 e-mail to Mr. Shelly with attachment. I am sending it to you unaltered and in its original format, including Mr. Shelly's e-mail to me forwarding the at issue e-mail. In doing so, we are expressly not waiving privilege and are certain that we have not done so because the email from Mr. Kelly to me does not including any confidential information. We are producing this in this format so that you can review it in its original format and so that there can be no claim that we altered the document. In the event that you believe that production of the forwarding e-mail in this format constitutes waiver of the attorney-client privilege, you should not review it, delete the e-mail, and immediately advise me of your position. Again, we are confident that we have not waived privilege.

We will have the formal discovery responses to you later today or early next week, but we do not expect to be producing any additional documents, as the discoverable documents provided today are the entirety of the documentation presently known to us that is responsive to your discovery requests.

If you have any questions, please let me know.  
Bryon

**Bryon R. Kaster, Esquire**  
Shareholder  
717-731-4800 Office  
888-811-7144 Fax  
[BKaster@dmclaw.com](mailto:BKaster@dmclaw.com) | Bio/vCard



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**From:** David Shelly <dshelly@nurselectstaffing.com>  
**Sent:** Friday, November 8, 2024 2:00 PM  
**To:** Kaster, Bryon <BKaster@dmclaw.com>

**Subject:** Fw: Brenda L. Kling, Individually and as Administratrix of the Estate of Geraldine E. Wiggins v. Rehabilitation Center at Brethren Village, et al.

**This Message Originated From Outside DMC**

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Original email.

Sincerely,

David Shelly, President  
NurSelect, LLC  
1829 New Holland Road  
Suite 13  
Reading, PA 19607  
Tel. (800) 484-8572  
Fax (484) 214-0055  
[www.nurseselectstaffing.com](http://www.nurseselectstaffing.com)



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**From:** Linda Reidenbaugh <[LLR@saxtonstump.com](mailto:LLR@saxtonstump.com)>

**Sent:** Thursday, January 12, 2023 4:12:49 PM

**To:** David Shelly <[dshelly@nurselectstaffing.com](mailto:dshelly@nurselectstaffing.com)>

**Cc:** [jsnader@bv.org](mailto:jsnader@bv.org) <[jsnader@bv.org](mailto:jsnader@bv.org)>; Kimberly A. Selemba <[kas@saxtonstump.com](mailto:kas@saxtonstump.com)>

**Subject:** Brenda L. Kling, Individually and as Administratrix of the Estate of Geraldine E. Wiggins v. Rehabilitation Center at Brethren Village, et al.

Hello Mr. Shelly,

On behalf of Kimberly A. Selemba, please find a copy of the attached correspondence.

Thank you.

**Linda Reidenbaugh** | Paralegal/Client Services Professional



280 Granite Run Drive, Suite 300

Lancaster, PA 17601

Phone: 717.556.1038 | Internal: 1038

[llr@saxtonstump.com](mailto:llr@saxtonstump.com)

[www.saxtonstump.com](http://www.saxtonstump.com)





**Sara Moriarty**

---

**From:** Joan M. Gilbride  
**Sent:** Thursday, October 5, 2023 2:20 PM  
**To:** Briana A. Semenza  
**Subject:** FW: Wiggins v. NurSelect, RSUI Claim No. 7030187058  
**Attachments:** 9402374\_1.pdf

**Importance:** High

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**From:** Anthony Viola <anthonyviola@libertyins.com>  
**Sent:** Thursday, October 5, 2023 2:02 PM  
**To:** Joan M. Gilbride <jgilbride@kbrlaw.com>; Wilson, Zach <zwilson@rsui.com>  
**Cc:** David Shelly <dshelly@nurselectstaffing.com>; Steve Pcsolar <stevepcsolar@libertyins.com>; Jason Rigby <jasonrigby@libertyins.com>  
**Subject:** FW: Wiggins v. NurSelect, RSUI Claim No. 7030187058  
**Importance:** High

Ms. Gilbride,

We are the agent/broker for NurSelect LLC. We are in receipt of your coverage declination letter attached above. We strongly disagree with your coverage position and would like to take this opportunity to accurately reflect the facts and timeline of events.

The letter above indicates NurSelect and Mr. David Shelly was aware of this incident involving Mr. Wiggins as early as October 14, 2022. Brethren Village counsel requested Ayana McDowell's contact information and statement regarding an incident involving Ms. Geraldine Wiggins that occurred on May 12, 2021. The insured was aware of an incident but, did not believe "fingers were being pointed" at the insured or its employee Ayanna McDowell as being responsible for the incident. Moreover, there was no indication Ms. Wiggins and/or her family were bringing forth a personal injury claim. The request for Ms. McDowell contact information and statement was 17 months after the incident. Mr. Shelly believed Brethren simply wanted Ms. McDowell statement on record in the event a claim was brought forth by Ms. Wiggins. The insured was not aware of any other information that obligate them to play insurance on notice of a claim. It should be further noted, there is a 2-way indemnification provision within the contract between NurSelect & Brethren. Said contract suggests Brethren agrees to defend and indemnify NurSelect from claims arising out of the care, services of residents or lack thereof. Considering Ms. McDowell was at the control and direction of Brethren coupled with the favorable contract language the insured had no reason to believe a claim was being brought forth against NurSelect.

The letter also indicates the insured received an email and **letter** dated January 12, 2023, from Brethren Village advising Brethren had been sued in the Court of Common Pleas in relation to an incident involving Mr. Geraldine Wiggins. The letter further advises that Brethren intends to file a joinder complaint against NurSelect to invoke NurSelect contractual obligation pursuant to a staffing contract. Let the record reflect accurately, NurSelect never received a letter via US mail or Certified Mail from Brethren Village Retirement Community or its counsel. The only correspondence the insured (Mr. David Shelly) received was an email dated January 12, 2023. The email was sent by Ms. Linda Reidenbaugh paralegal with Saxton & Stump Attorneys at Law. Not recognizing the sender and/or email address, Mr. David Shelly did not open the email from Ms. Linda Reidenbaugh. As a matter of fact, it was not until the insured was served with the lawsuit in September that included a cover letter referencing the January 12, 2023, correspondence that Mr. Selly discovered the unopen email.

Based on the facts and timeline above, it is clear Mr. Shelly timely reported this matter to RSUI. Circumstances would be different had Mr. Shelly received a certified letter from the law offices of Saxton & Stump and failed to take appropriate action. We believe the courts will agree with our position. Before taking legal action against RSUI, we provide the opportunity to rescind the current coverage position and reinstate coverage.

Sincerely,

Anthony



## Anthony Viola

*Claim Manager* | Liberty Insurance  
Agency

**P:** 412-571-5714 ext. 212 **F:** 412-571-9909

**A:** Manor Oak Two - Suite #800 1910 Cochran Road  
Pittsburgh PA 15220

**E:** [anthonyviola@libertyins.com](mailto:anthonyviola@libertyins.com)

**W:** [libertyins.com](http://libertyins.com)



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**From:** David Shelly <[dshelly@nurselectstaffing.com](mailto:dshelly@nurselectstaffing.com)>

**Sent:** Wednesday, October 4, 2023 11:54 AM

**To:** Anthony Viola <[anthonyviola@libertyins.com](mailto:anthonyviola@libertyins.com)>; Steve Pcsolar <[stevepcsolar@libertyins.com](mailto:stevepcsolar@libertyins.com)>

**Subject:** [EXTERNAL] FW: Wiggins v. NurSelect, RSUI Claim No. 7030187058

FYI

Sincerely,

David Shelly, President

**NurSelect, LLC**

1829 New Holland Rd., Suite 13

Reading, PA 19607

Main: (800) 484-8572

Direct: (484) 663-4374

Fax (484) 214-0055

[nurselectstaffing.com](http://nurselectstaffing.com)



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**From:** [Briana A. Semenza](#)  
**Sent:** Wednesday, October 4, 2023 10:59 AM  
**To:** [David Shelly](#)  
**Cc:** [Joan M. Gilbride](#); '[zwilson@rsui.com](mailto:zwilson@rsui.com)'  
**Subject:** Wiggins v. NurSelect, RSUI Claim No. 7030187058

Greetings –

Please see the attached letter, sent on behalf of RSUI Indemnity Company.

Regards,  
Briana

Briana A. Semenza | **KAUFMAN BORGEEST & RYAN LLP**  
200 Summit Lake Drive | Valhalla, NY 10595  
direct: 914.449.1011 | fax: 914.449.1100  
[vcard](#) | [email](#) | [website](#)

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# SAXTON & STUMP

LAWYERS AND CONSULTANTS

4250 Crums Mill Road, Suite 201 • Harrisburg, PA 17112

P: (717) 216-5505 • F: (717) 547-1900

**Direct Dial:** (717) 941-1214  
**Email:** [kas@saxtonstump.com](mailto:kas@saxtonstump.com)

January 12, 2023

**VIA EMAIL** ([dshelly@nurselectstaffing.com](mailto:dshelly@nurselectstaffing.com))

David Shelly, President  
NurSelect, LLC  
640 Freedom Business Center Dr.  
Third Floor  
King of Prussia, PA 19406

**Re: Brenda L. Kling, Individually and as Administratrix of the Estate of Geraldine E. Wiggins v. Rehabilitation Center at Brethren Village, et al.**  
**Case No. CI-22-04128, Lancaster County Court of Common Pleas**  
**Joinder of NurSelect, LLC**

Dear Mr. Shelly:

As you know from our prior communications, this law firm represents Brethren Village Retirement Community. A lawsuit has been commenced against Brethren Village in the Court of Common Pleas of Lancaster County related to the care and treatment of one of its residents, Geraldine Wiggins. Specifically, the lawsuit alleges negligence arising out of a fall sustained by Ms. Wiggins on May 12, 2021. Our investigation has revealed that Ayanna McDowell, CNA, who was employed by NurSelect, LLC at the relevant time, had direct involvement in this alleged fall. Upon confirming that Ayanna McDowell, CNA was an employee of NurSelect and reviewing the contractual agreement between NurSelect and Brethren Village, our office did not meet with Ms. McDowell.

You are aware that Brethren Village is a party to a Staffing Agreement with NurSelect for the provision of NurSelect Personnel on contractual assignments on a per-diem or temporary basis at Brethren Village. The Staffing Agreement contains a provision for Apportionment of Liability and Damages Indemnification. Specifically, Section 5.1 of the Staffing Agreement states:

5.1 Apportionment of Liability. It is hereby stipulated and agreed between the Client and NurSelect that with respect to any claim or action arising out of the Services, each entity shall only be liable for payment of that portion of any and all liability, costs,

January 12, 2023

Saxton & Stump

Page 2 of 2

expenses, demands, settlements or judgments resulting from negligence, actions or omissions of its own agents, officers, and employees.

Based upon this provision, Brethren Village will be filing a joinder complaint against NurSelect to invoke NurSelect's contractual agreement to indemnify Brethren Village for the alleged negligence, actions, or omissions of Ms. McDowell related the care and treatment of Ms. Wiggins. Please provide notice of this pending joinder against NurSelect to your liability insurance provider so that counsel can be assigned to represent NurSelect's interests.

Thank you for your attention to this matter.

Sincerely,

SAXTON & STUMP

*/s/ Kimberly A. Selemba*  
Kimberly A. Selemba, Esquire  
Senior Counsel

cc: John N. Snader, President/CEO, Brethren Village (via email)





## ***Professional Liability Insurance***

**Mail claims to:**  
945 E. Paces Ferry Rd.  
Suite 1800  
Atlanta, GA 30326-1160

**CLAIM OFFICE:**

**Fax claims to:**  
(404) 231-3755  
(Attn: Claims Department)

**Email claims to:**  
[reportclaims@rsui.com](mailto:reportclaims@rsui.com)

RSG 51029 0717

LAND000008



## COMMERCIAL LINES COMBINATION POLICY DECLARATIONS

## Landmark American Insurance Company

(A New Hampshire Stock Co.)  
(hereinafter called "the Company")

EXECUTIVE OFFICES: 945 East Paces Ferry Road, Suite 1800, Atlanta, GA 30326-1160

Policy Number: LHC801468

RENEWAL OF: LHC794794 00

Named Insured and Mailing Address:

Producer Name:

NURSELECT LLC  
1829 NEW HOLLAND ROAD  
SUITE 13  
READING, PA 19607

Policy Period: From: 3/1/2023 To: 3/1/2024 12:01 A.M. Standard Time at the Named Insured address as stated herein.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.

Business Description: ALLIED HEALTHCARE STAFFING AGENCY

## COVERAGE PARTS

## PREMIUM

## Commercial General Liability

COMMERCIAL GENERAL LIABILITY COVERAGE FORM -  
OCCURRENCE

\$ Included

## Professional Liability

MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS  
MADE AND REPORTED BASIS - BROAD

\$ Included

Total Advance Policy Premium

\$

Minimum Earned Premium

\$

Not Subject to Audit

Forms and Endorsements made a part of this policy at time of issue: Please see SCHEDULE OF ATTACHMENTS.

(Omits applicable forms and endorsements if shown in specific Coverage Form Declarations.)

THESE DECLARATIONS TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS, IF ANY, ISSUED TO FORM A PART THEREOF, COMPLETE THE ABOVE NUMBERED POLICY

March 08, 2023

Date

By:

Authorized Representative

Declarations Page 1 of 2

SubldID#:

585559

BinderID#

Created By:

JML

RSG 50011 1020

Page 1 of 2

**DECLARATIONS****Policy Number:** LHC801468**Effective Date:** 3/1/2023  
At 12:01 A.M. Standard Time**LIMITS OF INSURANCE:****CGL and Professional Liability:**\$ See Aggregate Limits Below Policy Aggregate Limit**Commercial General Liability:**\$ 3,000,000 General Aggregate Limit (Other than Products-Completed Operations)\$ 3,000,000 Products-Completed Operations Aggregate Limit\$ 1,000,000 Personal and Advertising Injury Limit\$ 1,000,000 Each Occurrence\$ 5,000 Medical Payments (Any One Person)\$ 50,000 Damage to Premises Rented to You**Professional Liability:**\$ 1,000,000 Each Claim\$ 3,000,000 Aggregate**DEDUCTIBLE:** \$ 2,500 Each Claim

<b>RETROACTIVE DATE:</b>	Coverage	Date
	Commercial General Liability	N/A
	Professional Liability	3/1/2020

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THESE DECLARATIONS ARE PART OF THE COMMON POLICY DECLARATIONS CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

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**NOTICE:**

This is a claims-made and reported policy. Please read the policy carefully and discuss the coverage afforded by the policy with your insurance agent or broker.



**LANDMARK AMERICAN INSURANCE COMPANY**Policy Number: LHC801468Insurer: Landmark American Insurance CompanyNamed Insured: NURSELECT LLC**NOTICE - DISCLOSURE OF TERRORISM PREMIUM**

This Coverage Part/Policy covers certain losses caused by terrorism. In accordance with the federal Terrorism Risk Insurance Act, as amended, we are required to provide you with a notice disclosing the portion of your premium, if any, attributable to the coverage for terrorist acts certified under the Terrorism Risk Insurance Act.

As defined in Section 102(1) of the Act: The term "act of terrorism" means any act or acts that are certified by the Secretary of the Treasury – in consultation with the Secretary of Homeland Security, and the Attorney General of the United States – to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

**DISCLOSURE OF PREMIUM**

The portion of your premium for the policy term attributable to coverage for terrorist acts certified under the Act is

\$ 0.00 .

In any case, if the insured rejects terrorism coverage in any scheduled underlying policy, this policy is written to exclude terrorism.

**DISCLOSURE OF FEDERAL PARTICIPATION IN PAYMENT OF TERRORISM LOSSES**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 80% of that portion of the amount of such insured losses that exceeds the applicable **Insurer** retention. However, if aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year, the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

**CAP INSURER PARTICIPATION IN PAYMENT OF TERRORISM LOSSES**

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a calendar year and we have met our insurer deductible under the Terrorism Risk Insurance Act, we will not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

**SCHEDULE OF POLICY ATTACHMENTS AND FORMS**

<u>Form Number</u>	<u>Form Title</u>
RSG 99054 0121	Notice - Disclosure of Terrorism Premium
RSG 51039 1017	Commercial General Liability Coverage Form - Occurrence
RSG 51044 0722	Medical Professional Liability Coverage Part Claims Made and Reported Basis - Broad
RSG 51031 0522	Common Policy Conditions
ENDT-01	Additional Insured Endorsement (Blanket) - RSG 55015 0418
ENDT-02	Communicable Disease Exclusion (CGL only) - RSG 56201 0920
ENDT-03	Cross Coverage Exclusion - Medical - Broad - RSG 56136 0319
ENDT-04	Cryptocurrency Exclusion - RSG 56216 0822
ENDT-05	Deductible Liability Insurance-Comb. Policy-Multiple Ded - RSG 94016 0916
ENDT-06	Exclusion - Correctional Medicine - RSG 56203 0321
ENDT-07	Exclusion - Designated Professional Services - RSG 56114 1118
ENDT-08	Hired and Non - owned Auto Liability
ENDT-09	Minimum Retained Premium - RSG 54025 0405
ENDT-10	Nuclear Energy Liability Exclusion - RSG 56058 0903
ENDT-11	Opioid and Controlled Substance Exclusion - RSG 56191 0421
ENDT-12	Pennsylvania - Notice of Cancellation & Nonrenewal - RSG 53015 0903
ENDT-13	Pennsylvania Surplus Lines Disclosure Notice - RSG 99091 0106
ENDT-14	Service Of Suit - RSG 94022 0407
ENDT-15	State Fraud Statement - RSG 99022 1022
ENDT-16	Supplementary Coverages Endorsement (Broad) - RSG 54207 1022
ENDT-17	Violation of Consumer Protection Laws Exclusion - RSG 56121 0822

**Policy No.:** LHC801468

RSG 54081 0710

## LANDMARK AMERICAN INSURANCE COMPANY

**COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the Company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is an Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

**SECTION I – COVERAGES****COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY****1. Insuring Agreement**

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle or defend any "claim" or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or "claim", knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or "claim", includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or "claim":

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;



- (2) Receives a written or verbal demand or "claim" for damages because of the "bodily injury" or "property damage"; or
  - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

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**d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

**f. Pollution**

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use by the building's occupants or their guests;
    - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - (i) Any insured; or
    - (ii) Any person or organization for whom you may be legally responsible;
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:

- (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
  - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
  - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire"; or
  - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) "Claim" or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such "claim" or "suit" by or on behalf of a governmental authority.

**g. Aircraft, Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:



(a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or

(b) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

#### **h. Mobile Equipment**

"Bodily injury" or "property damage" arising out of:

(1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or

(2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

#### **i. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

(1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

#### **j. Damage To Property**

"Property damage" to:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

(2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**k. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**l. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability**

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**q. Asbestos**

"Bodily injury" or "property damage" for past, present or future claims arising in whole or in part either directly or indirectly, out of the manufacture, distribution, sale, re-sale, re-branding, installation, repair, removal, encapsulation, abatement, disposal of, replacement or handling of, exposure to, testing for or failure to disclose the presence of, asbestos or products containing asbestos whether or not the asbestos is or was at any time airborne as a fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this insurance does not apply to "bodily injury" or "property damage" including expenses for;

- (1) The costs of clean up or removal of asbestos or products and materials containing asbestos;
- (2) The cost of such actions as may be necessary to monitor, assess and evaluate the release or threat of asbestos or products and material containing asbestos;
- (3) The cost of disposal of asbestos substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result; or
- (4) The cost of compliance with any law or regulation regarding asbestos.

**r. Biological Contaminants**

Any "claim" arising out of a "biological contaminant".

"Biological contaminant" means any biological irritant or contaminant including but not limited to any form of mold, mildew, mushroom, yeast, fungus, bacteria, virus, insect, allergen and any other type of biological agent, including any substance produced by, emanating from, or arising out of such "biological contaminant".

**s. Employment Practices**

Any "claim" arising out of or in any way related to:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, performance evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment related practices, procedures, policies, acts or omissions; or
- (4) Consequential "bodily injury" or "personal and advertising injury" as a result of (1) through (3) above.

This exclusion applies whether the Insured may be held liable as an employer or in any other capacity and to any obligation to share "damages" with or to repay someone else who must pay "damages" because of the injury.

It is further agreed that no coverage shall apply under this policy to any "claim" brought by or against any spouse, child, parent, brother or sister of the Insured or any other person.

The Company shall not have a duty to defend any "claim", "suit", arbitration or any other form of a trial court proceeding.

**t. Lead**

"Bodily injury" or "property damage" for past, present or future claims arising in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, re-branding, installation, repair, removal, encapsulation, abatement, disposal of, replacement or handling of, exposure to, ingestion of or testing for, lead or products containing lead whether or not the lead is or was at any time airborne as a particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.



It is further agreed that this insurance does not apply to "bodily injury" or "property damage" including expenses for:

- (1) The costs of clean up or removal of lead or products and materials containing lead;
- (2) The cost of such actions as may be necessary to monitor, assess and evaluate the release or threat of same, of lead or products and material containing lead;
- (3) The cost of disposal of lead substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result; or
- (4) The cost of compliance with any law or regulation regarding lead.

**u. Sexual Abuse**

Any "claims" involving the use of excessive influence or power on any individual, or the actual or alleged inappropriate physical contact or contact that is deemed by or alleged by the individual to be sexual or in any way unwelcome.

**v. Prior Knowledge**

Any alleged act, error, omission, or circumstance likely to give rise to a "claim" that an Insured had knowledge of prior to the effective date of this policy. This exclusion includes, but is not limited to any prior "claim" or possible "claim" referenced in the Insured's application.

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section **III – Limits Of Insurance**.

## **COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY**

### **1. Insuring Agreement**

- a.** We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle or defend any "claim" or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section **III – Limits Of Insurance**; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

- b.** This insurance applies to "personal and advertising injury" caused by an offense arising out of your business, but only if the offense was committed in the "coverage territory" during the policy period.

### **2. Exclusions**

This insurance does not apply to:

**a. Knowing Violation Of Rights Of Another**

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

**b. Material Published With Knowledge Of Falsity**

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

**c. Material Published Prior To Policy Period**

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

**d. Criminal Acts**

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

**e. Contractual Liability**

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

**f. Breach Of Contract**

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

**g. Quality Or Performance Of Goods – Failure To Conform To Statements**

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

**h. Wrong Description Of Prices**

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

**i. Infringement Of Copyright, Patent, Trademark Or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

**j. Insureds In Media And Internet Type Businesses**

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **15.a.**, **b.** and **c.** of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

**k. Electronic Chatrooms Or Bulletin Boards**

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

**l. Unauthorized Use Of Another's Name Or Product**

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**m. Pollution**

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

**n. Pollution-related**

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) "Claim" or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**o. Asbestos**

"Personal and advertising injury" for past, present or future claims arising in whole or in part either directly or indirectly, out of the manufacture, distribution, sale, resale, re-branding, installation, repair, removal, encapsulation, abatement, disposal of, replacement or handling of, exposure to, testing for or failure to disclose the presence of, asbestos or products containing asbestos whether or not the asbestos is or was at any time airborne as a fiber or particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this insurance does not apply to "personal and advertising injury" including expenses for:

- (1) The costs of clean up or removal of asbestos or products and materials containing asbestos;
- (2) The cost of such actions as may be necessary to monitor, assess and evaluate the release or threat of asbestos or products and material containing asbestos;
- (3) The cost of disposal of asbestos substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result; or
- (4) The cost of compliance with any law or regulation regarding asbestos.

**p. Biological Contaminants**

Any "claim" arising out of a "biological contaminant".

"Biological contaminant" means any biological irritant or contaminant including but not limited to any form of mold, mildew, mushroom, yeast, fungus, bacteria, virus, insect, allergen and any other type of biological agent, including any substance produced by, emanating from, or arising out of such "biological contaminant".

**q. Employment Practices**

Any "claim" arising out of or in any way related to:

- (1) Refusal to employ;
- (2) Termination of employment;
- (3) Coercion, demotion, performance evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or other employment related practices, procedures, policies, acts or omissions; or
- (4) Consequential "bodily injury" or "personal and advertising injury" as a result of (1) through (3) above.

This exclusion applies whether the Insured may be held liable as an employer or in any other capacity and to any obligation to share "damages" with or to repay someone else who must pay "damages" because of the injury.



It is further agreed that no coverage shall apply under this policy to any "claim" brought by or against any spouse, child, parent, brother or sister of the Insured or any other person.

The Company shall not have a duty to defend any "claim", "suit", arbitration or any other form of a trial court proceeding.

**r. Lead**

"Personal and advertising injury" for past, present or future claims arising in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, re-branding, installation, repair, removal, encapsulation, abatement, disposal of, replacement or handling of, exposure to, ingestion of or testing for, lead or products containing lead whether or not the lead is or was at any time airborne as a particle, contained in a product, carried on clothing, inhaled, transmitted in any fashion or found in any form whatsoever.

It is further agreed that this insurance does not apply to "personal and advertising injury" including expenses for:

- (1) The costs of clean up or removal of lead or products and materials containing lead;
- (2) The cost of such actions as may be necessary to monitor, assess and evaluate the release or threat of same, of lead or products and material containing lead;
- (3) The cost of disposal of lead substances or the taking of such other action as may be necessary to temporarily or permanently prevent, minimize or mitigate damage to the public health or welfare or to the environment, which may otherwise result; or
- (4) The cost of compliance with any law or regulation regarding lead.

**s. Sexual Abuse**

Any "claims" involving the use of excessive influence or power on any individual, or the actual or alleged inappropriate physical contact or contact that is deemed by or alleged by the individual to be sexual or in any way unwelcome.

**t. Prior Knowledge**

Any alleged act, error, omission, or circumstance likely to give rise to a "claim" that an Insured had knowledge of prior to the effective date of this policy. This exclusion includes, but is not limited to any prior "claim" or possible "claim" referenced in the Insured's application.

**u. War**

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**v. Access Or Disclosure Of Confidential Or Personal Information**

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

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## **COVERAGE C – MEDICAL PAYMENTS**

### **1. Insuring Agreement**

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:
  - (1) On premises you own or rent;
  - (2) On ways next to premises you own or rent; or
  - (3) Because of your operations;provided that:
  - (a) The accident takes place in the "coverage territory" and during the policy period;
  - (b) The expenses are incurred and reported to us within one year of the date of the accident; and
  - (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.
- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:
  - (1) First aid administered at the time of an accident;
  - (2) Necessary medical, surgical, X-ray and dental services, including prosthetic devices; and
  - (3) Necessary ambulance, hospital, professional nursing and funeral services.

### **2. Exclusions**

We will not pay expenses for "bodily injury":

#### **a. Any Insured**

To any insured, except "volunteer workers".

#### **b. Hired Person**

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

#### **c. Injury On Normally Occupied Premises**

To a person injured on that part of premises you own or rent that the person normally occupies.

#### **d. Workers' Compensation And Similar Laws**

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

#### **e. Athletics Activities**

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletics contests.

#### **f. Products-Completed Operations Hazard**

Included within the "products-completed operations hazard".

#### **g. Coverage A Exclusions**

Excluded under Coverage A.

## **SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

- 1. We will pay, with respect to any occurrence we investigate or any "claim" or "suit" against an insured that we settle or defend:
  - a. All expenses we incur.

- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the "claim" or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
- f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
  - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
  - b. This insurance applies to such liability assumed by the insured;
  - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
  - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
  - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
  - f. The indemnitee:
    - (1) Agrees in writing to:
      - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
      - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
      - (c) Notify any other insurer whose coverage is available to the indemnitee; and
      - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
    - (2) Provides us with written authorization to:
      - (a) Obtain records and other information related to the "suit"; and
      - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **2.b.(2)** of Section **I – Coverage A – Bodily Injury And Property Damage Liability**, such payments will not be deemed to be damages for "bodily injury" and "property damage" but will reduce the limits of insurance.



Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

## SECTION II – WHO IS AN INSURED

### 1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

### 2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

#### (1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

#### (2) "Property damage" to property:

- (a) Owned, occupied or used by;
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;  
you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker") or any organization while acting as your real estate manager.
- c. Any person or organization having proper temporary custody of your property if you die, but only:

(1) With respect to liability arising out of the maintenance or use of that property; and

(2) Until your legal representative has been appointed.

- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
- 3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
  - a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
  - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
  - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. "Claims" made or "suits" brought; or
  - c. Persons or organizations making "claims" or bringing "suits".
- 2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - b. Damages under Coverage **B**.
- 3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
- 4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
- 5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for Damages under Coverage **A** because of all "bodily injury" and "property damage" arising out of any one "occurrence".
- 6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

#### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

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**2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or offense which may result in a "claim". To the extent possible, notice should include:
  - (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and
  - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a "claim" is made or "suit" is brought against any insured, you must:
  - (1) Immediately record the specifics of the "claim" or "suit" and the date received; and
  - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.
- c. You and any other involved insured must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or a "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and
  - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

**3. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

**4. Other Insurance**

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

**a. Primary Insurance**

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

**b. Excess Insurance**

- (1) This insurance is excess over:
  - (a) Any of the other insurance, whether primary, excess, contingent or on any other basis:
    - (i) That is Fire, Extended Coverage, Builders' Risk, Installation Risk or similar coverage for "your work";
    - (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

- (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
- (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I – Coverage A – Bodily Injury And Property Damage Liability**.
- (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.
- (2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.
- (3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:
  - (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
  - (b) The total of all deductible and self-insured amounts under all that other insurance.
- (4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

**c. Method Of Sharing**

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

**5. Premium Audit**

Premium for this coverage is computed in accordance with the Company's rules and rates. Any premium shown as advance premium may be a deposit premium only. If the premium is a deposit premium, at the close of each audit period, the Company will compute the earned premium for that period. Audit premiums are due and payable upon notice.

The Company may examine and audit the Insured's books and records at any time during the policy period and within three years after the final termination of this policy, as far as they relate to the subject matter of this policy.

The first Named Insured as shown in the Declarations must keep records of information the Company will need for premium computation and upon request must send the Company copies of the information.

**6. Representations**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

**7. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and



b. Separately to each insured against whom "claim" is made or "suit" is brought.

#### **8. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

#### **9. When We Do Not Renew**

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 60 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

### **SECTION V – DEFINITIONS**

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:

- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Claim" is a written demand for damages because of actual or alleged "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies. "Claim" includes any "suit" as defined in this Policy.

5. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
- c. All other parts of the world if the injury or damage arises out of:
  - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
  - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
  - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication;

provided the insured's responsibility to pay damages is determined only by actual law suits filed and maintained within the territory described in Paragraph a. above. This policy does not apply to "claims" pursued elsewhere.

6. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

7. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.

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8. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
9. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;
- if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

10. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

11. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

12. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

- 13. "Mobile equipment"** means any of the following types of land vehicles, including any attached machinery or equipment:
- a.** Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b.** Vehicles maintained for use solely on or next to premises you own or rent;
  - c.** Vehicles that travel on crawler treads;
  - d.** Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1)** Power cranes, shovels, loaders, diggers or drills; or
    - (2)** Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - e.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - (2)** Cherry pickers and similar devices used to raise or lower workers;
  - f.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

- (1)** Equipment designed primarily for:
  - (a)** Snow removal;
  - (b)** Road maintenance, but not construction or resurfacing; or
  - (c)** Street cleaning;
- (2)** Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

- 14. "Occurrence"** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- 15. "Personal and advertising injury"** means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
- a.** False arrest, detention or imprisonment;
  - b.** Malicious prosecution;
  - c.** The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  - d.** Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  - e.** The use of another's advertising idea in your "advertisement".
- 16. "Pollutants"** mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**17. "Products-completed operations hazard":**

- a.** Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:
  - (1)** Products that are still in your physical possession; or
  - (2)** Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
    - (a)** When all of the work called for in your contract has been completed.
    - (b)** When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
    - (c)** When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.
- b.** Does not include "bodily injury" or "property damage" arising out of:
  - (1)** The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
  - (2)** The existence of tools, uninstalled equipment or abandoned or unused materials; or
  - (3)** Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.

**18. "Property damage" means:**

- a.** Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b.** Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from, computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- 19. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:**
  - a.** An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
  - b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.
- 20. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.**
- 21. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.**
- 22. "Your product":**
  - a. Means:**
    - (1)** Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:



- (a) You;
- (b) Others trading under your name; or
- (c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

**23. "Your work":**

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

(2) The providing of or failure to provide warnings or instructions.

## LANDMARK AMERICAN INSURANCE COMPANY

***This Form Provides Claims-Made Coverage.  
Please Read The Entire Form Completely.***

## **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART – CLAIMS MADE AND REPORTED BASIS – BROAD FORM**

Throughout this document, the word “Insured” means any person or entity qualified as such under **Part I. E. Covered Persons and Entities**. The word “Company” refers to the Company providing the insurance shown on the Declarations.

Other words and phrases that appear in **bold** have special meaning. Refer to **Part III. Definitions**.

### **Part I. Insuring Agreement**

#### **A. Covered Services**

The Company will pay on behalf of the Insured, as shown in the Declarations, all sums that the Insured becomes legally obligated to pay as **Damages** and associated **Claim Expenses** arising out of a negligent act, error or omission, even if the **Claim** asserted is groundless, false or fraudulent, in the rendering of or failure to render professional services as described in the Business Description on the Declarations, provided that the:

1. **Claim** is first made against the Insured during the **Policy Period**, and reported to the Company no later than sixty (60) days after the end of the **Policy Period**;
2. Negligent act, error or omission took place in a covered territory;
3. Negligent act, error or omission took place after the **Retroactive Date** as shown in the Declarations.

#### **B. Defense and Settlement**

The Company will have the right and duty to defend any **Claim** against an Insured seeking **Damages** to which this policy applies, even if any of the allegations of the **Claim** are groundless, false or fraudulent. The Company's right and duty to defend any **Claim** shall end when the Company's Limit of Liability has been exhausted by payment of **Damages** and/or **Claim Expenses**, or has been tendered to the Insured or to a court of competent jurisdiction.

The Company shall not settle any **Claim** without the Insured's written consent. The Insured shall not admit any liability for or settle any **Claim** or incur any costs, charges or expenses without the written consent of the Company.

The Company shall have the right and the duty to select legal counsel for the defense of a **Claim**. In the event the Insured is entitled by law to select independent counsel to defend the **Claim**, the **Claim Expenses** or other covered costs the Company must pay to that counsel are limited to the rates the Company actually pays to counsel retained by the Company in the defense of similar **Claims** in the community where the **Claim** is being defended. The Company may exercise the right to require that such counsel have experience in defending **Claims** similar to the one pending against the Insured. The Insured agrees that such counsel will comply with the Company's litigation guidelines and reporting requirements, timely respond to the Company's requests, and provide information regarding the **Claim** when requested.

#### **C. Policy Limits**

Regardless of the number of persons or entities insured or included in **Part I. E. Covered Persons and Entities**, or the number of claimants or **Claims** made against the Insured:

1. The maximum liability of the Company for **Damages** resulting from each **Claim** first made against the Insured during the **Policy Period** and the Extended Reporting Period, if purchased, shall not exceed the amount shown in the Declarations as each **Claim**;
2. The maximum liability of the Company for all **Damages** as a result of all **Claims** first made against

the Insured during the **Policy Period** and the Extended Reporting Period, if purchased, shall not exceed the amount shown in the Declarations as Aggregate.

The inclusion of more than one Insured, or the making of **Claims** by more than one person or organization, does not increase the Company's Limit of Liability. All **Claims** arising out of a single negligent act, error or omission, or a series of related negligent acts, errors or omissions by one or more Insureds shall be treated as a single **Claim** for all purposes of this policy. All **Claims** shall be deemed first made when the earliest of such **Claims** is first made, regardless of whether such date is before or during the **Policy Period** and all such **Claims** shall be subject to the same Each Claim Limit of Liability during that **Policy Period**.

**Claim Expenses** shall be paid by the Company in addition to the applicable Limits of Liability stated in the Declarations. The Company's obligation to pay **Claim Expenses** in addition to the applicable Limits of Liability as shown in the Declarations shall be limited to an additional **Claims Expense** Limits of Liability equal to the amount as shown in the Declarations as the Each Claim Limit of Liability.

The Company shall not be obligated to pay any **Claim** for **Damages** or defend any **Claim** after the Limit of Liability has been exhausted by payment of judgments, settlements, **Claim Expenses** or any combination thereof.

#### D. Deductible Provisions

The deductible amount as shown in the Declarations shall be paid by the Insured and applies to each **Claim** and includes **Damages** or **Claim Expenses**, whether or not a loss payment is made. If the deductible amount is initially paid by the Company, the Named Insured shall reimburse the amount paid within thirty (30) days, upon written request of the Company.

#### E. Covered Persons and Entities

1. Named Insured as shown in the Declarations, and if the Named Insured is an individual, his or her spouse, or domestic partner, but only with respect to the professional services rendered by or on behalf of the Named Insured;
2. Any present or former principal, partner, officer, director, member, employee or volunteer worker of the Named Insured, but only as respects professional services rendered on behalf of the Named Insured;
3. Heirs, Executors, Administrators, and in the event of an Insured's death, incapacity or bankruptcy, legal representatives of any Insured, but only with respect to professional services rendered prior to such Insured's death, incapacity or bankruptcy;
4. Any Medical Director while acting within the scope of his/her administrative and supervisory duties for the Named Insured. It is further agreed that coverage does not apply to the Medical Director while acting within his/her capacity as a Physician, Surgeon or Dentist in the treatment, or direction of the treatment, of any patient;
5. Any student enrolled in a training program, but only while acting within the scope of their duties as such and under the direct supervision of faculty members or educators of such training program;
6. Any faculty member or educator of a training program, but only while acting within the scope of their duties as such.

#### F. Covered Territory

This policy applies to covered **Claims** arising out of negligent acts, errors or omissions committed anywhere in the world. However, the policy does not provide coverage for **Claims** made against the Insured in countries where the United States of America has declared or imposed a trade embargo or sanctions, or in countries where the United States of America does not maintain diplomatic relations.

#### G. Extended Reporting Period

If the policy is not renewed for any reason, or is cancelled for any reason other than for nonpayment of premium or deductible (whether cancelled by the Company or by the Named Insured), the Named Insured as shown on the Declarations, has the right to purchase, within sixty (60) days of policy termination, an extension of the coverage granted by this policy. This reporting period extension shall

remain in force for a period of either twelve (12), twenty-four (24), or thirty-six (36) months after the policy terminates, but only for **Claims** resulting from negligent acts, errors or omissions committed before the effective date of the cancellation or nonrenewal, and otherwise covered by this policy. Increased premiums or deductibles or modifications of coverage terms or conditions upon renewal do not constitute cancellation or nonrenewal.

The premium for this Extended Reporting Period will not exceed one hundred percent (100%) for twelve months, one hundred fifty percent (150%) for twenty-four months or one hundred seventy-five percent (175%) for thirty-six months of the full annual premium set forth in the Declarations and any attached endorsements, and must be elected and paid within sixty (60) days after the effective date of the policy's termination. Such additional premium is deemed fully earned immediately upon the inception of the Extended Reporting Period.

The Extended Reporting Period is added by endorsement and, once endorsed, cannot be cancelled. The Extended Reporting Period does not reinstate or increase the Limits of Liability. The Company's Limits of Liability during the Extended Reporting Period are part of, and not in addition to, the Company's Limits of Liability stated in the Declarations.

#### H. Supplementary Coverages

It is agreed that any and all payments made for the following is included within, and shall not be in addition to, the Policy Limits as described in this Policy.

1. The Company will pay **Claim Expenses** incurred in the defense of any disciplinary proceeding or investigation against an Insured by any licensing board, disciplinary board, peer review committee, or similar entity alleging professional misconduct or violation of the rules of professional conduct, provided that the alleged misconduct or violation first occurred after the **Retroactive Date** and arises out of the Insured's performance of the Named Insured's professional services as described in the Declarations. This provision applies only to disciplinary proceedings first brought against an Insured during the **Policy Period** and reported to the Company no later than sixty (60) days after the end of **Policy Period**. The Company's obligation to defend an Insured under the provision is subject to a sub-Limit of Liability of \$25,000 and applies only to **Claims Expenses** incurred with the consent of the Company. **Damages** are not covered by this provision.

This sub-Limit of Liability is the maximum amount payable under this provision for the **Policy Period**, regardless of the number of disciplinary proceedings first commenced during the **Policy Period** or the number of Insureds subject to disciplinary proceedings. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.

2. The Company will pay reasonable expenses incurred by the Insured at the Company's request to assist in the investigation of the **Claim** or defense of the suit, including actual loss of earnings up to \$500 a day for each Insured because of time off from work, subject to an aggregate amount of \$5,000 for each individual Insured for each **Claim**, not to exceed an aggregate amount of \$10,000 per **Policy Period**. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.
3. The Company will pay fines and penalties specified in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the Health Information Technology for Economic and Clinical Health Act (HITECH) as assessed against the Insured, or assessed against third parties who make a claim on the Insured for indemnification or contribution for such fines and penalties based on violations and breaches of the privacy and security provisions of HIPAA, and HITECH, and/or regulations promulgated under said statutes relating to Protected Health Information (PHI) and electronic Protected Health Information (ePHI), but only if such violations or breaches arise out of professional services as described in the Declarations or from the handling of PHI or ePHI of the Insured's own personnel.

For the purposes of this coverage, **Claim** shall also include the notice of investigation, audit, and/or assessment of fines or penalties by the U.S. Department of Health and Human Services or the Office of Civil Rights in connection with violations of or breaches under HIPAA and/or HITECH.

For the purposes of this coverage, **Damages** shall also include HIPAA and/or HITECH fines and



penalties.

The coverage described above is subject to a sub-Limit of Liability in an aggregate amount of \$100,000. This sub-Limit of Liability is the maximum amount payable under this provision for the **Policy Period**, regardless of the number of violations and/or breaches by the Insured of the privacy and security provisions of HIPAA and HITECH and the regulations established thereunder arising from the performance of or failure to perform professional services as described in the Declarations. Any payments made under this provision are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.

4. The Company will pay **Damages** or **Claims Expenses** as a result of **Claims** arising out of circumstances involving the use of excessive influence of power on any patient, or the actual or alleged inappropriate physical contact or contact that is deemed by or alleged by any patient to be sexual or in any way unwelcomed, is limited to a sub-Limit of Liability of \$250,000 each claim and \$500,000 in the aggregate. This sub-limit of liability is part of and not in addition to the applicable Limits of Liability as shown in the Declarations. Payment of **Damages** or **Claim Expenses** by the Company reduces the applicable Limits of Liability as shown in the Declarations.

Once the sub-Limit of Liability is exhausted, no additional coverage shall be afforded by this coverage provision and the following Exclusion will be added to the policy:

It is agreed that no coverage shall apply under this policy to any **Claim** or **Claim Expenses** arising out of or involving the use of excessive influence or power on any patient, or the actual or alleged inappropriate physical contact or contact that is deemed by or alleged by any patient to be sexual or in any way unwelcomed.

## Part II. Exclusions

This policy does not apply to any **Claim** or **Claim Expenses** based upon or arising out of:

- A. **Personal and Advertising Liability.**
- B. Obligations of any Insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.
- C. **Bodily Injury** to any of the following:
  1. Officers, directors, partners, employees or volunteer workers of the Insured arising out of and in the course of employment by the insured;
  2. The spouse, child, parent, or sibling of **C. (1.)** above.
- D. The insolvency or bankruptcy of an Insured or of any other person, firm or organization.
- E. Dishonest, fraudulent, criminal, malicious, or intentional acts, errors or omissions committed by or at the direction of any Insured.
- F. Any business enterprise not named in the Declarations which is owned, controlled, operated or managed by any Insured.
- G. A **Claim** by one Insured under this policy against another Insured under this policy, unless such **Claim** arises solely out of professional services performed for that party.
- H. Any obligation or liability assumed by the Insured under any contract or any oral or written agreement, unless liability would have attached in the absence of such a contract or agreement, including the Insured's decision to unilaterally terminate or otherwise alter, remove or abridge any rights, benefits or obligations under any contract or agreement.
- I. The ownership, rental, leasing, maintenance, use (including operation, loading and unloading), or repair of any real or personal property, including **Damage** to property owned, occupied or used by, rented to or leased to an Insured.
- J. The rendering or failure to render professional services by the Insured as a physician, surgeon or dentist.
- K. The performance of any service by any Insured while under the influence of intoxicants or illegal drugs.

- L. The ownership, maintenance, use (including operation, loading and unloading), or entrustment to others of any aircraft, automobile, motor vehicle, mobile vehicles or watercraft owned or operated by or rented or loaned to any insured. This exclusion includes the movement of patients in and out of any motor vehicle, aircraft, automobile or watercraft.
- M. 1. The actual, alleged or threatened presence, discharge, dispersal, seepage, migration, release or escape of **Pollutants** or asbestos;
2. The failure to discover or disclose the existence or amount of **Pollutants** or asbestos;
3. Any supervision, instructions, recommendations, warnings or advice given or which should have been given in connection with M. (1.) or (2.) above;
4. Any request, demand or order that any Insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize or, in any way respond to or assess the effects of **Pollutants** or asbestos;
5. Any **Claim** or suit by or on behalf of a governmental authority for **Damages** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing or, in any way, responding to, or assessing the effect of **Pollutants** or asbestos.
- N. 1. Refusal to employ;
2. Termination of employment;
3. Coercion, demotion, performance evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination, retaliation or other employment related practices, procedures, policies, acts or omissions;
4. Consequential **Bodily Injury** or **Personal Injury** as a result of N. (1.) through (3.) above.
- This exclusion applies whether the Insured may be held liable as an employer or in any other capacity and to any obligation to share **Damages** with or to repay someone else who must pay **Damages** because of the injury.
- It is further agreed that no coverage shall apply under this policy to any **Claim** brought by or against any spouse, child, parent, brother or sister of the Insured or any other person. The Company shall not have a duty to defend any **Claim**, suit, arbitration or any other form of trial court proceeding.
- O. Any alleged act, error, omission, or circumstance likely to give rise to a **Claim** that an Insured had knowledge of prior to the effective date of this policy. This exclusion includes, but is not limited to, any prior **Claim** or possible **Claim** referenced in the Insured's application.
- P. Infringement of copyright, patent, trademark, trade name, trade dress, service mark, title or slogan.
- Q. Experimental procedures and experimental products, including procedures using experimental products. Experimental procedures and products are those not approved by the United States Food and Drug Administration (FDA).
- R. Obstetrical procedures, including but not limited to any emergency obstetrical procedures.

### Part III. Definitions

- A. **Advertisement** means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
1. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
2. Regarding web-sites, only that part of a web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
- B. **Bodily Injury** means physical or mental harm, sickness or disease sustained by a person including death resulting from any of these at any time.
- C. **Claim** means a written demand for monetary or non-monetary relief received by the Insured during the **Policy Period**, including the service of suit, or the institution of an arbitration proceeding. Additionally,

**Claims** that arise from an incident, occurrence or offense first reported by the Insured during the **Policy Period** and accepted by the Company in accordance with **Part IV. A. Notice of Claim** will be considered a **Claim** first made during the **Policy Period**.

- D. Claim Expense** means expenses incurred by the Company or the Insured with the Company's consent in the investigation, adjustment, negotiation, arbitration, mediation and defense of covered **Claims**, whether paid by the Company or the Insured with the Company's consent, and includes:
1. Attorney fees;
  2. Costs taxed against the Insured in any **Claim** defended by the Company;
  3. Interest on the full amount of any judgment that accrues after entry of the judgment and before the Company has paid, offered to pay or deposited in court the part of the judgment that is within the applicable Limit of Liability;
  4. The cost of appeal bonds or bonds to release attachments, but only for bond amounts within the available applicable policy limit and only if said **Claims** are covered by the policy;
  5. Reasonable expenses incurred by the Insured at the Company's request other than:
    - a. Loss of earnings;
    - b. Salaries or other compensation paid to the Insured or any employee of the Insured.
- E. Damages** means compensatory judgment, award or settlement, including punitive or exemplary damages, except damages for which insurance is prohibited by law. **Damages** does not include disputes over fees, deposits, commissions or charges for goods or services.
- F. Policy Period** means the period of time stated in the Declarations or any shorter period resulting from policy cancellation or amendment to the policy.
- G. Personal and Advertising injury** means injury, including consequential **Bodily Injury**, arising out of one or more of the following offenses:
1. False arrest, detention or imprisonment;
  2. Malicious prosecution or abuse of process;
  3. Wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
  4. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
  5. Oral or written publication, in any manner, of material that violates a person's right of privacy;
  6. Use of another's advertising idea in your **Advertisement**; or
  7. Infringing upon another's copyright, trade dress or slogan in your **Advertisement**.
- H. Retroactive Date** means the date stated in the Declarations on or after which any alleged or actual negligent act, error or omission must have first taken place in order to be considered for coverage under this policy.
- I. Pollutants** means any solid, liquid, gaseous or thermal irritant, contaminant or toxin, whether live or inanimate; including, but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, metals, silica, lead, lead compounds or materials containing lead, asbestos, asbestos compounds or materials containing asbestos, radon, waste or any like substances. Waste includes materials to be recycled, reconditioned or reclaimed.

**Part IV. General Conditions.** The following Conditions are a precedent to coverage under the Policy:

**A. Notice of Claim**

The Insured must notify the Company as soon as practicable of an incident, occurrence or offense that may reasonably be expected to result in a **Claim**. Where notice to the Company of such incidents, occurrences or offenses has been acknowledged as adequate by the Company in writing, subsequent

**Claims** derived from such incidents, occurrences or offenses will be deemed as first made at the time the incident, occurrence or offense giving rise to such **Claim** was first provided. The Insured also must immediately send copies to the Company of any demands, notices, summonses or legal papers received in connection with any **Claim**, and must authorize the Company to obtain records and other information. Please send all claim information to:

Attention: **Claims** Dept.  
RSUI Group, Inc.  
945 East Paces Ferry Road, Suite 1800  
Atlanta, Georgia 30326-1160  
Or Via Email:  
[reportclaims@rsui.com](mailto:reportclaims@rsui.com)

**B. Prohibition of Voluntary Payments and Settlements**

With respect to any **Claim** covered under this policy, the Insured will not make payment, admit liability, settle **Claims**, assume any obligation, agree to arbitration or any other means of resolution of any dispute, waive any rights or incur **Claim Expenses** without prior written Company approval, except at the Insured's own cost.

**C. Cooperation**

The Insured will cooperate with the Company in the conduct of a **Claim** and, upon the Company's request, submit to examination and interrogation by the Company representative, under oath if required, and will attend hearings and trials and assist in effecting settlements, securing and giving evidence, and obtaining the attendance of witnesses. The Insured shall further cooperate with the Company and do whatever is necessary to secure and effect any rights of indemnity, contribution or apportionment that the Insured may have, and the Company may exercise those rights in the name of the Insured.

**D. Nonrenewal**

The Company will give the Named Insured sixty (60) days written notice prior to nonrenewal of this policy by mailing or delivering the notice to the first Named Insured's last known mailing address as shown in the Declarations.

**E. Premium and Audit**

Premium for this coverage is computed in accordance with the Company's rules and rates. Any premium shown as advance premium may be a deposit premium only. If the premium is a deposit premium, at the close of each audit period, the Company will compute the earned premium for that period. Audit premiums are due and payable upon notice.

The Company may examine and audit the Insured's books and records at any time during the **Policy Period** and within three years after the final termination of this policy, as far as they relate to the subject matter of this policy.

The first Named Insured, as shown in the Declarations, must keep records of information the Company will need for premium computation and, upon request, must send the Company copies of the information.

**F. Authorization**

The first Named Insured listed in the Declarations agrees to act as the Named Insured with respect to giving and receiving of all notices, exercising the Extended Reporting Period option, canceling the policy, paying all premiums and deductibles and receiving any return premiums that may become due.

**G. Subrogation**

In the event of any **Claim** under this policy, the Company will be subrogated to all the Insured's rights of recovery against any person or organization, and the Insured will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured will do nothing after the loss to prejudice such rights.

**H. Other Insurance**

This policy will be excess over, and will not contribute with, any other existing insurance, unless such



other insurance is specifically written to be excess of this policy.

When this insurance is excess, the Company shall have no duty under this policy to defend any **Claim** or suit that any other insurer has a duty to defend. If such other insurer refuses to defend such **Claim** or suit, the Company shall be entitled to the Insured's rights against all such insurers for any **Claim Expenses** incurred by the Company.

If it is determined that both this insurance and other insurance or self insurance apply to any **Claim** on the same basis, whether primary, excess or contingent, the Company will not be liable under this policy for a greater proportion of the **Damages** or **Claim Expenses** than the applicable Limit of Liability under the policy for such **Damages** bears to the total applicable Limit of Liability of all other insurance or self insurance, whether or not collectible against such **Claims**.

**I. Actions Against the Insurer**

No action will be taken against the Company unless, as a condition precedent, the Insured is in full compliance with all of the terms of this policy, and until the amount of the Insured's obligations to pay shall have been finally determined, either by judgment against the Insured after actual trial, or by written agreement of the Insured, the claimant and the Company.

**J. Coverage in Bankruptcy**

Bankruptcy or insolvency of the Insured or of the Insured's estate does not relieve the Company of its obligations under this policy.

**K. False or Fraudulent Claims**

If an Insured knowingly makes any **Claim** that is false or fraudulent, this insurance shall become void and entitlement to coverage for all **Claims** hereunder shall be forfeited.

**L. Application**

The Insured agrees that the statements in the application are personal representations, that they shall be deemed material and that this policy is issued in reliance upon the truth of such representations and that this policy embodies all agreements existing between the Insured and the Company, or any of its agents, relating to this insurance. The signed application, and any attachments thereto, submitted in connection with this Policy are incorporated herein and constitute a part of this Policy.

**LANDMARK AMERICAN INSURANCE COMPANY****COMMON POLICY CONDITIONS**

All Coverage Parts included in this policy are subject to the following conditions.

**A. CANCELLATION**

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium or deductible; or
  - b. 60 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

**B. CHANGES**

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

**C. EXAMINATION OF YOUR BOOKS AND RECORDS**

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

**D. INSPECTIONS AND SURVEYS**

We have the right but are not obligated to:

1. Make inspections and surveys at any time;
2. Give you reports on the conditions we find; and
3. Recommend changes.

Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

1. Are safe or healthful; or
2. Comply with laws, regulations, codes or standards.

This condition applies not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

**E. PREMIUMS**

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

**F. TRANSFER OF YOUR RIGHTS AND DUTIES UNDER THIS POLICY**

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.



**RSUI Group, Inc.**  
945 East Paces Ferry Road  
Suite 1800  
Atlanta, GA 30326-1160

Phone (404) 231-2366  
Fax (404) 231-3755

ATTN: Health Care Providers – Applicants and Policyholders

RE: HIPAA Privacy and Security Rule Compliance

The Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and associated regulations require health care providers to maintain the confidentiality of patients’ protected health information (“PHI”). PHI includes, among other things, medical records and billing records relating to medical care. As a “covered entity” under HIPAA, you are not permitted to share PHI with a “business associate” unless the business associate has provided you with a Business Associate Agreement that provides for the protection of PHI. Although a professional liability insurer may not be deemed to be a “business associate” as defined by HIPAA, we want to assure your compliance with the regulations in the event a Business Associate Agreement is necessary.

We are committed to maintaining the confidentiality of PHI that you may provide as a part of the administration of your insurance coverage. Enclosed you will find a Business Associate Agreement that explains how we will safeguard any PHI that you may provide to us in the process of underwriting your policy or handling a claim on your behalf. Please review it and keep it with your professional liability policy. You do not need to sign or return this agreement to us. Please maintain it in your files to document our mutual obligations with respect to PHI.

If you have any questions or concerns about the Business Associate Agreement, please contact Whitney Thomas at (404)260-3795 or [whitneythomas@rsui.com](mailto:whitneythomas@rsui.com).

Sincerely,

A handwritten signature in black ink that reads "Whitney Thomas". The signature is written in a cursive, flowing style.

Whitney Thomas  
Regulatory Compliance  
RSUI Group, Inc.

RSUI Indemnity Company  
Landmark American Insurance Company  
Covington Specialty Insurance Company

Landmark v. Nurseselect MSJ\_00000534

A member of Allegheny and Sons LLC LAND0000045



## **BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is executed by Landmark American Insurance Company, Covington Specialty Insurance Company, RSUI Indemnity Company and RSUI Group, Inc. ("Business Associate") in favor of its insured healthcare providers (the "Provider").

### **RECITALS**

WHEREAS, the Business Associate provides professional liability insurance to the Provider pursuant to a policy of insurance (the "Business Arrangement"), and in connection with the Business Arrangement the Provider discloses to the Business Associate certain individually identifiable protected health information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended from time to time.

WHEREAS, the parties desire to comply with the HIPAA standards for privacy of PHI of patients of the Provider, and to set forth the terms and conditions pursuant to which the parties will handle PHI that Business Associate receives in the course of performing its services for or on behalf of the Provider under the Business Arrangement.

NOW THEREFORE, for and in consideration of the recitals above, the benefits to Business Associate under the Business Arrangement and the mutual covenants and conditions herein contained, Business Associate agrees as follows:

### **SECTION 1 – DEFINITIONS**

Terms used, but not otherwise defined in the Agreement shall have the same meaning as set forth in the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rules"), 45 CFR parts 160-164, as promulgated by the United States Department of Health and Human Services ("HHS"), as amended from time to time.

### **SECTION II – OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- a. Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to Provider any use or disclosure of the PHI, of which it becomes aware, and otherwise not provided for by this Agreement.
- e. Business Associate shall require its agents and subcontractors that receive PHI from Business Associate or Provider to agree to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Business Associate agrees to make available and provide right of access to PHI held by the Business Associate that does not merely duplicate the information maintained by the Provider, to Provider at its request, or as directed by Provider, to an Individual. Business Associate shall provide access within reasonable time and manner as specified by Provider.

- g. Business Associate agrees to incorporate all amendments or corrections to PHI when notified by the Provider in writing that such information is inaccurate or incomplete. 45 CFR § 164.526
- h. Business Associate agrees to make available to the Secretary of HHS (or its designee) all internal practices, books, and records relating to the use and/or disclosure of PHI received from the Provider, for purposes of determining the Provider's compliance with the Privacy Rules, subject to attorney-client and other applicable legal privileges.
- i. Business Associate agrees to provide an accounting of such disclosures of PHI to Provider or, as directed by Provider, to an Individual in accordance with 45 CFR § 164.528, as amended from time to time. Business Associate shall provide such accounting within a reasonable time and manner as specified by the Provider.
- j. Business Associate shall comply with all applicable requirements of the HIPAA Security Rule.
- k. Business Associate shall immediately report to Covered Entity any breach of PHI, as defined by HIPAA. Business Associate shall cooperate with Covered Entity's investigation, mitigation and response efforts related to any such breach. Additionally, Business Associate shall be responsible for any costs, liabilities, damages, expenses, and attorney's fees incurred by Covered Entity related to such breach.
- l. In the event Business Associate undertakes any of Covered Entity's duties under HIPAA, Business Associate shall comply with all HIPAA regulations applicable to Covered Entity in the discharge of such duties.

## **2.1 PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE**

- a. Business Associate, its agents and employees, may use or disclose PHI as necessary to perform its duties under the Business Arrangement and only as allowed by the terms of the Business Arrangement, this Agreement, or as required or allowed by law.
- b. Business Associate may also use and/or disclose PHI as necessary for the proper management and administration of Business Associate, and to carry out the legal responsibilities of Business Associate.
- c. Business Associate agrees that it will not use or disclose PHI in a manner that violates or would violate the Privacy Rules, or the minimum necessary policies and procedures of the Provider that are communicated to Business Associate.
- d. Business Associate may use PHI to report violations of the law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

## **SECTION III – OBLIGATIONS OF THE PROVIDER**

- a. Provider shall notify Business Associate of any limitation(s) in the Provider's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. Provider shall notify Business Associate, in writing and in a timely manner, of any restrictions or other arrangement to which the Provider has agreed with an individual in accordance with 45 CFR § 164.522, to the extent that such changes may affect Business Associate's use or disclosure of PHI hereunder; provided however, that the Provider will not agree to, and Business Associate will not be required to comply with, any restriction that is inconsistent with the purpose or terms of the Business Arrangement.

### **3.1 PERMISSIBLE REQUESTS BY PROVIDER**

Provider shall not request Business Associate to use and/or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Provider; provided however, that the Business Associate will use or disclose PHI for management and administrative activities of the Business Associate as outlined in Section 2.1.

## **SECTION IV – TERM AND TERMINATION**

### **4.1 TERM AND TERMINATION**

This Agreement shall remain in effect for the entire term of the Business Arrangement, or until terminated as set forth herein. This Agreement will automatically terminate without further action of the parties upon the termination or expiration of the Business Arrangement, subject to the following:

The Provider acknowledges and agrees that, due to the nature of the Business Arrangement, the Business Associate must have the ability to receive PHI from the Provider for as long as the Business Arrangement is in place, and that the Business Associate must have the ability to receive PHI from the Provider for the duration of any defense obligations arising under the Business Arrangement. Thus, the Provider acknowledges and agrees that termination of this Agreement is not feasible as long as the Business Arrangement is in place, or as long as Business Associate has any defense obligations arising under the Business Arrangement. Accordingly, any other provision in this Agreement notwithstanding, the parties agree that (a) any notice of termination of this Agreement will also serve as notice of termination of the Business Arrangement, (b) the termination of this Agreement will under no circumstances be effective until the termination of the Business Arrangement is effective, and (c) this Agreement may not be terminated and will remain in effect as long as Business Associate has any defense obligations arising under the Business Arrangement.

### **4.2 TERMINATION FOR MATERIAL BREACH**

Subject to Section 4.1, upon Provider's knowledge of a material breach by Business Associate, Provider shall either:

- a. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Business Arrangement if Business Associate does not cure the breach or end the violation within a reasonable time specified by the Provider;
- b. Immediately terminate this Agreement and the Business Arrangement if the Business Associate has breached a material term of this Agreement and cure is not possible; or
- c. If neither termination nor cure is feasible, Provider shall report the violation to the Secretary of HHS.

### **4.3 RETURN/DESTRUCTION OF PHI**

Except as provided in Section 4.4, upon termination of the Business Arrangement (and any ongoing defense obligations, if applicable), for any reason, Business Associate will, if feasible, return or destroy PHI received from, or created or received by it on behalf of the Provider that Business Associate maintains in any form, including any backup tapes. Business Associate shall retain no copies of such information. Business Associate further agrees to use its best efforts to recover PHI in the possession of subcontractors or agents.

**4.4 NO FEASIBLE OR PRACTICAL RETURN/DESTRUCTION OF PHI**

Business Associate has determined that returning or destroying PHI is infeasible for ongoing defense obligations (if applicable), state regulatory requirements imposed upon professional liability insurers, such as reporting, review, and audit requirements, and carrying out any necessary business responsibility of the Business Associate. This serves as Business Associate's notification to Provider of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

**SECTION V – MISCELLANEOUS**

- a. Regulatory References – A reference in this Agreement to a section of the Privacy Rule means the section as in effect or as amended.
- b. Amendment – The parties recognize that this Agreement may need to be modified from time to time and agree to take such action as is necessary to amend this Agreement for Provider to comply with federal and state law including, but not limited to the requirements of the Privacy Rule and HIPAA.
- c. Survival – The respective rights and obligations of Business Associate under Section 4.3 of this Agreement shall survive the termination of this Agreement.
- d. Notices – All notices and other communications required or permitted pursuant to this Agreement shall be in writing, addressed to the party at the party's regular business address. All notices and other communications shall be sent by overnight courier or sent by registered or certified mail, return receipt requested.
- e. Interpretation – Any ambiguity in this Agreement shall be resolved to permit Provider to comply with HIPAA and the Privacy Rules.

**BUSINESS ASSOCIATE:**

Signed:



Michael Wayman  
Senior Vice President  
RSUI Group, Inc.

Address for Notice:

RSUI Group, Inc.  
945 East Paces Ferry Road  
Suite 1800  
Atlanta, GA 30326-1160



*This Endorsement Changes The Policy. Please Read It Carefully.*

## **ADDITIONAL INSURED ENDORSEMENT (BLANKET)**

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This endorsement modifies insurance provided under the following:

### **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD**

1. In consideration of the premium charged, the following is added as an Additional Insured, but solely with regard to professional services rendered or that should have been rendered by the Named Insured:

Any person or organization to whom or to which the Named Insured is obligated by virtue of a written contract or by the issuance or existence of a written permit, to provide insurance such as is afforded by this policy.

2. It is also agreed that the policy does not apply to:
  - a. **Claims** by an Additional Insured against the Named Insured;
  - b. **Claims** that include allegation or facts indicating sole liability on the part of an Additional Insured.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 01

*This Endorsement Changes The Policy. Please Read It Carefully.*

## COMMUNICABLE DISEASE EXCLUSION

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This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

**A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**

**2. Exclusions**

This insurance does not apply to:

**Communicable Disease**

"Bodily injury" or "property damage" arising out of the actual or alleged transmission of a "communicable disease".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a "communicable disease";
- b. Testing for a "communicable disease";
- c. Failure to prevent the spread of the disease; or
- d. Failure to report the disease to authorities.

**B. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

**2. Exclusions**

This insurance does not apply to:

**Communicable Disease**

"Personal and advertising injury" arising out of the actual or alleged transmission of a "communicable disease".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a "communicable disease";
- b. Testing for a "communicable disease";
- c. Failure to prevent the spread of the disease; or
- d. Failure to report the disease to authorities.

**C. For the purposes of this exclusion:**

"Communicable disease" means any illness or disease caused by an infectious agent or its toxins, including but not limited to any bacteria, virus, mold, mildew, fungi, or parasite, that occurs through the direct or indirect transmission of the infectious agent or its product.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 02

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **CROSS COVERAGE EXCLUSION – MEDICAL BROAD FORM**

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This endorsement modifies insurance provided under the following:

### **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE**

The Medical Professional Liability coverage and the Commercial General Liability coverage provided in this Policy are mutually exclusive.

It is agreed that any claim, damages, Supplementary Payments, or any amounts covered under the Commercial General Liability Coverage Form Claims Made RSG 51030 shall not also be covered under the Medical Professional Liability Coverage Part Claims Made and Reported Basis-Broad-RSG 51044.

It is further agreed that any **Claim, Damages, or Claim Expenses** or any amounts covered under the Medical Professional Liability Coverage Part Claims Made and Reported Basis-Broad-RSG 51044 shall not also be covered under the Commercial General Liability Coverage Form Claims Made RSG 51030. Whenever any **Claim** is determined to be covered, either wholly or in part, by the Medical Professional Liability Coverage Part Claims Made and Reported Basis-Broad-RSG 51044, the Commercial General Liability Coverage Form shall not apply and the maximum liability of the Company shall not exceed the Professional Liability Each Claim limit of liability shown in the Declarations.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 03

*This Endorsement Changes The Policy. Please Read It Carefully.*

## CRYPTOCURRENCY EXCLUSION

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This endorsement modifies insurance provided under the following:

### MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE

1. In consideration of the premium charged, it is agreed that no coverage shall apply under this policy to any **Claim** and/or **Claim Expenses** alleging, based upon, arising out of, attributable to, directly or indirectly resulting from, in consequence of, or in any way involving **Cryptocurrency** or any **Cryptocurrency Offering**.
2. It is agreed that the following definitions are added to **Part III. Definitions**:
  - A. **Cryptocurrency** means any actual or purported electronic, computer derived, digital or virtual instrument, asset, currency, token, coin, unit of account, store of value, funds, or medium of exchange using encryption techniques, methodologies, or technology, including blockchain or similar mechanisms, to secure, verify and/or validate the transfer of such electronic, computer derived, digital or virtual instrument, asset, currency, unit of account, store of value, funds, or medium of exchange between one or more parties.
  - B. **Cryptocurrency Offering** means any direct, indirect, actual, alleged, attempted, or proposed purchase or sale, or offer to purchase or sell, any **Cryptocurrency** issued or created by, or in connection with the Insured.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 04



*This Endorsement Changes The Policy. Please Read It Carefully.*

## DEDUCTIBLE LIABILITY INSURANCE (COMBINATION POLICY – MULTIPLE DEDUCTIBLES)

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### SCHEDULE

Coverage	Amount and Basis of Deductible	
	PER CLAIM	or PER OCCURRENCE
1) Bodily Injury Liability OR		
2) Property Damage Liability OR		
3) Personal and Advertising Injury Liability OR		
4) Bodily Injury Liability, Property Damage Liability, Personal and Advertising Injury Liability	\$ 2,500	

**APPLICATION OF ENDORSEMENT** (Enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all “Bodily Injury”, “Property Damage” and “Personal and Advertising Injury” Liability, however caused):

1. Our obligation under the Bodily Injury Liability, Property Damage Liability, and Personal and Advertising Injury Liability Coverages to pay damages on your behalf applies only to the amount of damages in excess of any deductible amounts stated in the Schedule above as applicable to such coverages.
2. The deductible applies to the coverage option and to the basis of the deductible indicated by the placement of the deductible amount in the Schedule above. The deductible amount stated in the Schedule above applies as follows:
  - A. PER CLAIM BASIS. If the deductible amount indicated in the Schedule above is on a per claim basis, that deductible applies as follows:
    - 1) Under Bodily Injury Liability coverage, to all damages sustained by any one person because of “Bodily Injury”;
    - 2) Under Property Damage Liability Coverage, to all damages sustained by any one person because of “Property Damage”;

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 05

- 3) Under Personal and Advertising Injury Liability Coverage, to all damages sustained by any one person because of "Personal and Advertising Injury".
- 4) Under Bodily Injury Liability, Property Damage Liability, and Personal and Advertising Injury Liability Coverages Combined, to all damages sustained by any one person because of:
  - a) "Bodily Injury";
  - b) "Property Damage";
  - c) "Personal and Advertising Injury".

If damages are claimed for care, loss of services or death resulting at any time from "Bodily Injury", a separate deductible amount will be applied to each person making a claim for such damages.

With respects to "Property Damage" and "Personal and Advertising Injury" Liability, person includes an organization.

- B. PER OCCURRENCE BASIS. If the deductible amount indicated in the Schedule above is on a "per occurrence" basis, that deductible amount applies as follows:

- 1) Under Bodily Injury Liability Coverage, to all damages because of "Bodily Injury";
- 2) Under Property Damage Liability Coverage, to all damages because of "Property Damage";
- 3) Under Personal and Advertising Injury Liability Coverage, to all damages sustained by any one person because of "Personal and Advertising Injury".
- 4) Under Bodily Injury Liability, Property Damage Liability, and Personal and Advertising Injury Liability Coverages Combined, to all damages sustained by any one person because of:
  - a) "Bodily Injury";
  - b) "Property Damage";
  - c) "Personal and Advertising Injury".

3. The terms of this insurance, including those with respect to:

- a) Our right and duty to defend any "suits" seeking those damages; and
  - b) Your duties in the event of any "occurrence", claim, or "suit"
- apply irrespective of the application of the deductible amount.

4. We may pay any part of all of the deductible amount to effect settlement of any claims or "suit" and upon notification of the action taken, you shall promptly reimburse us for such part of the deductible amount as has been paid by us.
5. When used in this endorsement, damages includes any payments made under the Supplementary Payments provisions of this policy.
6. If you do not promptly reimburse us for any deductible amount owned, then any cost incurred by us in collection of the deductible amount will be added and applied in addition to the applicable deductible amount without limitation. These costs include, but are not limited to, collection agency fees, attorney's fees and interest.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **EXCLUSION – CORRECTIONAL MEDICINE**

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This endorsement modifies insurance provided under the following:

### **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD**

In consideration of the premium charged, it is agreed no coverage shall apply under this policy to any **Claim** and/or **Claim Expenses** based upon, arising out of, or in any way involving the rendering of or failure to render services of a professional nature, including healthcare services and medical services, by the Insured or by any person or organization for whose acts, errors or omissions the Insured is legally responsible, in a correctional facility or center, detention center, jail, penal institution, prison, remand center, reformatory, or any similar center, facility, or institution.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 06

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **EXCLUSION – DESIGNATED PROFESSIONAL SERVICES**

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This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE FORM**

#### **SCHEDULE**

<b>Description Of Professional Services:</b>
ALLIED HEALTHCARE STAFFING AGENCY

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to any professional services shown in the Schedule, the following exclusion is added to Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** and Paragraph 2., **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability**:

This insurance does not apply to “bodily injury”, “property damage” or “personal and advertising injury” due to the rendering of or failure to render any professional service.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 07



*This Endorsement Changes The Policy. Please Read It Carefully.*

## HIRED AND NON-OWNED AUTO LIABILITY

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE FORM

In consideration of an additional premium of \$Included, it is hereby understood and agreed that the policy is amended as follows:

- A.** The declarations page is amended to include the following under **Commercial General Liability** in the **LIMITS OF INSURANCE** section:
- |             |   |
|-------------|---|
| \$1,000,000 | Hired Auto and Non-Owned Auto Liability Each Occurrence |
| \$1,000,000 | Hired Auto and Non-Owned Auto Liability Aggregate       |
- B.** Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A.** applies, **SECTION II – WHO IS AN INSURED** is deleted and replaced with the following:
1. Each of the following is an insured to the extent set forth below.
    - a. You.
    - b. Any other person using a “hired auto” with your permission.
    - c. With respect to a “non-owned auto”, any partner or “executive officer” of yours, but only while such “non-owned auto” is being used in your business.
    - d. Any other person or organization, but only with respect to their liability because of acts or omissions of an insured under paragraphs **a.**, **b.** or **c.** above.
  2. None of the following is an insured:
    - a. Any partner or “executive officer” with respect to any “auto” owned by such partner or officer or a member of his or her household;
    - b. The owner or lessee (of whom you are a sub-lessee) of a “hired auto” or the owner of a “non-owned auto” or any agent or “employee” of any such owner or lessee; or
    - c. Any person or organization with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.
- C. SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, is amended by the addition of the following:
- Hired Auto and Non-Owned Auto Liability: The insurance provided under **COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY**, shall apply to “bodily injury” and “property damage” arising out of the:
1. maintenance or use of a “hired auto” by you or your “employees” in the course of your business; or
  2. use of a “non-owned auto” by any person other than you in the course of your business.
- D.** Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, the definition of “insured contract” in **SECTION VI – DEFINITIONS**, is deleted and replaced with the following:

This endorsement effective 3/1/2023  
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 by Landmark American Insurance Company

Endorsement No.: 08

"Insured contract" means that part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".

- E. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, **SECTION V – DEFINITIONS** is amended by the addition of the following:

"Hired auto" means any "auto" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent, or borrow from any of your "employees", your partners, your "executive officers", or "volunteer workers", or members of their households.

"Non-owned auto" means any "auto" you do not own, lease, hire, rent or borrow which is used in connection with your business. This includes "autos" owned by your "employees", your partners, your "executive officers", or "volunteer workers", or members of their households, but only while used in your business.

- F. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, subparagraph **g.** of paragraph **2.**, **Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** (Section I – Coverages) is deleted and replaced as follows:

- g.** any "claim" based upon or arising out of "bodily injury" or "property damage" arising out of the ownership, maintenance, operation, use or entrustment to others or loading or unloading of:

- (1) any aircraft or watercraft owned or operated by or rented or loaned to any Insured; or
- (2) any other aircraft or watercraft operated by any person in the course of his/her employment or activities on behalf of the Named Insured.

- G. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, subparagraph **j.** of paragraph **2.**, **Exclusions of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** (Section I – Coverages) is deleted and replaced as follows:

- j.** any "claim" based upon or arising out of "property damage" to:

- (1) property owned or being transported by or rented or loaned to the Insured; or
- (2) property in the care, custody or control of the Insured.

- H. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, subparagraph **c.** of paragraph **2.**, **EXCLUSIONS OF COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY** (Section I – coverages) is deleted.

- I. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, **SECTION III – LIMITS OF INSURANCE** is amended by the addition of the following:

The Hired Auto and Non-Owned Auto Liability Each Occurrence limit shown in paragraph **A.** of this endorsement is the most we will pay for damages because of all "bodily injury" and "property damage" with respect to Hired Auto and Non-Owned Auto Liability arising out of any one "occurrence".

The Hired Auto and Non-Owned Auto Liability Aggregate limit shown in paragraph **A.** of this endorsement is the most we will pay because of all "bodily injury" and "property damage" with respect to all Hired Auto and Non-Owned Auto Liability.

- J. Paragraph **2.** of **SECTION III – LIMITS OF INSURANCE** is deleted and replaced by the following:

- 2.** The General Aggregate Limit is the most we will pay for the sum of:

- a.** Damages under Coverage **A** including Hired Auto and Non-Owned Auto Liability, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
- b.** Damages under Coverage **B.**

- K. Solely with respect to Hired Auto and Non-Owned Auto Liability, to which Coverage **A** applies, paragraph **4.** **Other Insurance** in **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted and replaced with the following:

This insurance is excess over any primary insurance covering any "hired auto" or any "non-owned auto".

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **MINIMUM RETAINED PREMIUM**

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This endorsement modifies insurance provided under the following:

### **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE**

In the event of cancellation of this policy by the Insured, return premium shall be computed at .90 of the pro rata unearned policy premium, subject however to a retention by the company of not less than \$5,625.00.

Nothing in this endorsement is deemed to affect the Company's cancellation rights which remain as indicated in the coverage form.

It is further agreed that return premium may be allowed on a pro rata basis if cancelled for non payment of premium or deductible, subject however to retention by the company of the minimum retained premium as shown above.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 09

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **NUCLEAR ENERGY LIABILITY EXCLUSION**

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This endorsement modifies insurance provided under the following:

**MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE**

**This policy does not apply;**

- a. Under any Liability Coverage**, to bodily injury or property damage;
- (1) with respect to which an Insured under the policy is also an Insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters, or Nuclear Insurance Associates of Canada, or would be an Insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - (2) resulting from the hazardous properties of nuclear material and with respect to which (a) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (b) the Insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization;
- b. Under any Medical Payments Coverage** or any Supplemental Payments provision relating to first aid, to expenses incurred with respect to bodily injury resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organization;
- c. Under any Liability Coverage** to bodily injury or property damage resulting from the hazardous properties of nuclear material, if:
- (1) the nuclear material (a) is at any nuclear facility owned by, or operated by or on behalf of, an insured, or (b) has been discharged or dispersed therefrom;
  - (2) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
  - (3) the bodily injury or property damage arises out of the furnishing by an Insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility but if such facility is located within the United States of America, its territories or possessions, or Canada, this exclusion (3) applies only to property damage to such nuclear facility and any property thereat;
- d. As used in this Endorsement:**
- (1) "Hazardous properties" include radioactive, toxic, or explosive properties;
  - (2) "Nuclear material" means source material, special nuclear material or byproduct material;
  - (3) "Source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;
  - (4) "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor,

This endorsement effective 3/1/2023  
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Endorsement No.: 10



- (5) "Waste" means any waste material (a) containing byproduct material and (b) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (6), (a) or (b) thereof;
- (6) "Nuclear facility" means:
  - (a) any nuclear reactor;
  - (b) any equipment or device designed or used for (i) separating the isotopes of uranium or plutonium, (ii) processing or utilizing spent fuel, or (iii) handling, processing, or packaging waste;
  - (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the Insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
  - (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste; and includes the site on which any of the foregoing is located, all operations conducted on such site, and all premises used for such operations;
- (7) "Nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material;
- (8) "Property damage" includes all forms of radioactive contamination of property.

All other terms and conditions of this policy remain unchanged.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## OPIOID AND CONTROLLED SUBSTANCE EXCLUSION

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This endorsement modifies insurance provided under the following:

### All Coverages without Limitation

In consideration of the premium charged, it is agreed that this Policy will not be triggered or apply and will provide no coverage for indemnity, defense, supplemental or any other exposure where **Claims**, suits, occurrences or demands of any sort, without limitation, against any Insured are:

1. Based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:
  - a. Any actual or alleged abuse, misuse, illicit use, overuse, addiction, dependency, unlawful distribution, or diversion of any **Controlled Substance**;
  - b. Any supervision, instruction, training, education, recommendation, or guideline given, or which should have been given, in connection with any **Controlled Substance**; or
  - c. Inadequate or inaccurate evaluation, control or reporting of, or the failure to evaluate, control or report, the conduct or suspected conduct described in paragraph 1.a. above.
2. Brought by or on behalf of any state, municipality or other governmental entity or agency seeking damages, fines, penalties or any other type of relief, whether monetary or not, arising from or in any way related to any Insured manufacturing, selling, distributing, or dispensing **Controlled Substances**.

For the purposes of this exclusion, **Controlled Substances** shall mean:

- a. any opioid or narcotic drug, narcotic medication, or narcotic substance of any type, nature or kind, including, but not limited to, buprenorphine, codeine, fentanyl, hydrocodone, morphine, oxymorphone, tapentadol, oxycontin, hydromorphone, medperidine, methadone, oxycodone, or naloxone;
- b. any substance that is a controlled substance defined by or included in the Schedules of the Controlled Substance Act of the United States of America (21 U.S.C. § 801 et seq.) or any other judicial, statutory, regulatory or other legal measure of any nation, province, state, municipality or other governmental division or subdivision; or
- c. any substance that is in the future labelled or determined to be any of the substances described in a. or b. of this definition.

This exclusion applies even if the **Claims** or suits against any Insured allege negligence, including but not limited to negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by any Insured.

This exclusion also applies to any **Claim** or suit by or on behalf of any individual or entity seeking certification at any time as a class action, whether or not such action is actually certified, arising from or in any way related to any Insured manufacturing, selling, distributing, or dispensing **Controlled Substances**.

However, this exclusion shall not apply to any **Claim** by or on behalf of a patient, arising out of an actual or alleged negligent act, error or omission by the Insured in the prescribing, administering, or dispensing of a **Controlled Substance** for its intended use, or in providing counseling or treatment related to any **Controlled Substance**.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 11

*This Endorsement Changes The Policy. Please Read It Carefully.*

## PENNSYLVANIA – NOTICE OF CANCELLATION AND NON-RENEWAL AMENDMENT

This endorsement modifies insurance provided under the following:

**MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD  
COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE**

**The Notice of Cancellation and non-renewal clause as contained in this policy is deleted and replaced as follows:**

The Named Insured may cancel this policy by mailing or delivering to the Company advance notice of cancellation.

The Company may cancel this policy by:

**A. CANCELLATION OF POLICIES IN EFFECT FOR SIXTY (60) DAYS OR LESS:**

If this policy has been in effect for sixty (60) days or less, the Company may cancel this policy for any reason, by mailing thirty (30) days advance notice of cancellation to the Named Insured.

**B. CANCELLATION OF POLICIES IN EFFECT FOR MORE THAN SIXTY (60) DAYS:**

If this policy has been in effect more than sixty (60) days or more, or is a renewal policy to Landmark American Insurance Company, the Company may cancel this policy only for one or more of the following reasons by mailing the following number of day advance notice to the Named Insured:

REASON FOR CANCELLATION	NUMBER OF DAYS ADVANCE NOTICE TO BE PROVIDED NAMED INSURED
Non-payment of premium (failure to pay a premium when due)	Fifteen (15) days
If the Named Insured makes a material misrepresentation that effects the insurability of risk	Fifteen (15) days
A substantial change in the risk covered by this policy	Sixty (60) days
If the Company loses its reinsurance for this policy	Sixty (60) days
If the Named Insured does not comply with policy terms, conditions or duties	Sixty (60) days
Any other reason approved the by Insurance Commissioner	Sixty (60) days

**This policy may also be cancelled from inception upon discovery that the policy was obtained through fraudulent statements, omissions, or concealment of facts material to the acceptance of the risk or to the hazard assumed by the Company**

**C. NOTICE OF NON-RENEWAL:**

In the event that the Company decides to non-renew this policy, The Company will mail at least sixty (60)

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 12

days advance written notice of non-renewal to the Named Insured.

D. NOTICE OF INCREASE IN PREMIUM – RENEWAL:

If the Company offers renewal terms with an increase in premium, the Company will provide the Named Insured with thirty (30) days advance notice.

The cancellation or non-renewal notice will be mailed via registered or first class mail to the Named Insured at the mailing address stated in the Declarations. The cancellation or non-renewal notice will state the effective date of the cancellation as well as the reason(s) for cancellation or non-renewal and the policy will terminate on that date.

If coverage is cancelled by the Company, the earned premium shall be computed pro-rata. If coverage is cancelled by the Insured, the earned premium shall be computed short rate.

All other terms and conditions of this policy remain unchanged.



## ***IMPORTANT NOTICE***

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### **PENNSYLVANIA SURPLUS LINES DISCLOSURE NOTICE**

The insurer which has issued this insurance is not licensed by the Pennsylvania Insurance Department and is subject to limited regulation. This insurance is NOT covered by the Pennsylvania Insurance Guaranty Association.

*This Endorsement Changes The Policy. Please Read It Carefully.*

## **SERVICE OF SUIT**

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This endorsement modifies insurance provided under the following:

### **ALL COVERAGE PARTS**

In the event of our failure to pay any amount claimed to be due, we, at your request, will submit to the jurisdiction of any court of competent jurisdiction within the United States of America. Nothing in this condition constitutes or should be understood to constitute a waiver of our rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court or seek a transfer of a case to another Court as permitted by the laws of the United States or of any state in the United States, moreover, this endorsement is not an agreement that the law of a particular jurisdiction applies to any dispute under the policy.

Service of process in such suit may be made upon the Senior Claims Officer of RSUI Group, Inc. 945 East Paces Ferry Road, Suite 1800, Atlanta, GA 30326-1160, or his designee. In any suit instituted against any one of them upon this contract, we will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above named is authorized and directed to accept service of process on our behalf in any such suit and/or upon your request to give a written undertaking to you that we will enter a general appearance upon our behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States of America, which makes provision therefore, we hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for the purpose in the statute, or his successor or successors in office, as our true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by you or on your behalf or any beneficiary hereunder arising out of this contract of insurance, and we hereby designate the above named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

All other terms and conditions of the policy remain unchanged

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 14

### **State Fraud Statements**

(Signature Required for New York Only)

#### **ARKANSAS, LOUISIANA, RHODE ISLAND, TEXAS AND WEST VIRGINIA FRAUD STATEMENT**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

#### **ALASKA FRAUD STATEMENT**

A person who knowingly and with intent to injure, defraud, or deceive an insurance company files a claim containing false, incomplete, or misleading information may be prosecuted under state law.

#### **ALABAMA FRAUD STATEMENT**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.

#### **ARIZONA FRAUD STATEMENT**

For your protection Arizona law requires the following statement to appear on this form. Any person who knowingly presents a false or fraudulent claim for payment of a loss is subject to criminal and civil penalties.

#### **CALIFORNIA FRAUD STATEMENT**

For your protection, California law requires that you be made aware of the following: Any person who knowingly presents false or fraudulent information to obtain or amend insurance coverage or to make a claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

#### **COLORADO FRAUD STATEMENT**

It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance, and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to a policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

#### **DELAWARE FRAUD STATEMENT**

Any person who knowingly, and with intent to injure, defraud or deceive any insurer, files a statement of claim containing any false, incomplete or misleading information is guilty of a felony.

#### **DISTRICT OF COLUMBIA FRAUD STATEMENT**

**WARNING:** It is a crime to provide false, or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

#### **FLORIDA FRAUD STATEMENT**

Any person who knowingly and with intent to injure, defraud or deceive any insurer, files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

#### **HAWAII FRAUD STATEMENT**

For your protection, Hawaii law requires you to be informed that any person who presents a fraudulent claim for payment of a loss or benefit is guilty of a crime punishable by fines or imprisonment, or both.

#### **IDAHO FRAUD STATEMENT**

Any person who knowingly, and with intent to defraud or deceive any insurance company, files a statement of claim containing any false, incomplete or misleading information is guilty of a felony.

#### **INDIANA FRAUD STATEMENT**

Any person who knowingly and with intent to defraud an insurer files a statement of claim containing any false, incomplete, or misleading information commits a felony.

#### **KANSAS FRAUD STATEMENT**

An act committed by any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written, electronic, electronic impulse, facsimile, magnetic, oral, or telephonic communication or statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto.

#### **KENTUCKY FRAUD STATEMENT**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.

#### **MAINE FRAUD STATEMENT**

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or a denial of insurance benefits.

#### **MARYLAND FRAUD STATEMENT**

Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

#### **MINNESOTA FRAUD STATEMENT**

Any person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime.

#### **NEW HAMPSHIRE FRAUD STATEMENT**

Any person who, with a purpose to injure, defraud or deceive any insurance company, files a statement of claim containing any false, incomplete or misleading information is subject to prosecution and punishment for insurance fraud, as provided in RSA 638:20.

#### **NEW JERSEY FRAUD STATEMENT**

Any person who includes any false or misleading information on an application for an insurance policy is subject to criminal and civil penalties.



#### **NEW MEXICO FRAUD STATEMENT**

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to civil fines and criminal penalties.

#### **OHIO FRAUD STATEMENT**

Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

#### **OKLAHOMA FRAUD STATEMENT**

**WARNING:** Any person who knowingly and with intent to injure, defraud, or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

#### **OREGON FRAUD STATEMENT**

Any person who knowingly files a claim containing a false or deceptive statement for payment of a loss or benefit or knowingly presents materially false information in an application for insurance may be guilty of a crime and may be subject to fines and confinement in prison.

#### **PENNSYLVANIA FRAUD STATEMENT**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

#### **PUERTO RICO FRAUD STATEMENT**

Any person who knowingly and with the intention of defrauding presents false information in an insurance application, or presents, helps, or causes the presentation of a fraudulent claim for the payment of a loss or any other benefit, or presents more than one claim for the same damage or loss, shall incur a felony and, upon conviction, shall be sanctioned for each violation by a fine of not less than five thousand dollars (\$5,000) and not more than ten thousand dollars (\$10,000), or a fixed term of imprisonment for three (3) years, or both penalties. Should aggravating circumstances be present, the penalty thus established may be increased to a maximum of five (5) years, if extenuating circumstances are present, it may be reduced to a minimum of two (2) years.

#### **TENNESSEE, VIRGINIA, AND WASHINGTON FRAUD STATEMENT**

It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

**SIGNATURE REQUIRED – NEW YORK ONLY**

**NEW YORK FRAUD STATEMENT**

Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime, and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

\_\_\_\_\_  
LHC801468  
Policy Number

\_\_\_\_\_  
NURSELECT LLC  
Insured/Applicant/Claimant (Legal Entity)

\_\_\_\_\_  
By (Authorized Representative) - Printed Name

\_\_\_\_\_  
By (Authorized Representative) - Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

*This Endorsement Changes The Policy. Please Read It Carefully.*

## SUPPLEMENTARY COVERAGES ENDORSEMENT

This endorsement modifies insurance provided under the following:

### MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD

In consideration of the premium charged, it is agreed that:

#### 1. Part I. Insuring Agreements, H. Supplementary Coverages is amended to include:

1. The Company will pay **Damages** or **Claims Expenses** as a result of **Claims** arising out of an insured's professional services performed during the rendering of emergency medical treatment without remuneration, at the scene of an accident, medical crisis or disaster. This coverage is subject to a sub-Limit of Liability in an aggregate amount of \$25,000. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.
2. The Company will reimburse the Insured for **Evacuation Expenses** actually incurred in connection with an **Evacuation** which first takes place during the **Policy Period** and which is reported to the Company as soon as practicable, but in no event later than thirty (30) days after you first incur **Evacuation Expenses** for which coverage will be requested. You are not required to obtain the Company's prior written approval or consent before incurring any **Evacuation Expenses**.

This coverage is subject to a sub-Limit of Liability in an aggregate amount of \$25,000. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.

No coverage will be available for **Evacuation Expenses** arising out of any:

- a. strike or bomb threat, unless the **Evacuation** was ordered by a civil authority;
  - b. false fire alarm or planned evacuation drill;
  - c. vaccination of one or more residents because of their individual medical condition;
  - d. nuclear reaction, radiation, or any radioactive contamination, however caused;
  - e. seizure or destruction of property by order of a governmental authority, provided that this exclusion shall not apply to an order of evacuation by a governmental authority due to a condition described above; or
  - f. war, including undeclared or civil war, warlike action by a military force, insurrection, rebellion, or revolution.
3. The Company will pay up to \$500 for loss that is due to **Property Damage** to your patient's tangible property if resulting directly from or during the performance of professional services as described in the Declarations. The Company will make these payments regardless of fault. These payments will not exceed \$5,000 for all such losses resulting from all professional services, regardless of the number of patients whose tangible property is injured. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declarations.
  4. The Company will reimburse the Insured for **Legal/Media Expenses** actually incurred in connection with a **Legal Defense Proceeding** first brought against an Insured and reported during the **Policy Period** that occurred after the Policy's **Retroactive Date** and that arises out of the Insured's performance of professional services as described in the Declarations.

This endorsement effective 3/1/2023  
 Form part of Policy Number LHC801468  
 Issued to NURSELECT LLC  
 by Landmark American Insurance Company

Endorsement No.: 16

This coverage is subject to a sub-Limit of Liability in an aggregate amount of \$25,000. There will be no deductible for payments made under this provision, and any such payments are a part of, and not in addition to, the Company's Limits of Liability as described in the Declaration s.

2. The following Definitions are in addition to Policy Definitions contained ~~Part III.~~ and apply only to this endorsement:

**A. Evacuation** means the removal of all or the majority of patients from one or more of your locations or facilities in response to an actual or threatened, natural or ~~man-made~~ condition that is unexpected and unforeseen and causes the patients of such location or facility to be in imminent danger of loss of life or physical harm.

Such condition must be in the form of an emergency or sudden crisis requiring immediate action, and not the result of a latent or hidden condition at the location or facility.

**B. Evacuation Expenses** means reasonable costs and expenses actually incurred by you in connection with the **Evacuation**, including the costs associated with transporting and lodging patients who have been evacuated. **Evacuation Expenses** shall not include any remuneration, salaries, overhead, fees, or benefit expenses of the Named Insured or any Insured.

**C. Property Damage** means:

1. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
2. Loss of use of tangible property of others that is not physically injured. All such loss of use shall be deemed to occur at the time of the accident, including continuous or repeated exposure to substantially the same general harmful conditions that caused it.

For the purposes of this coverage, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**D. Legal Defense Proceeding** means:

1. A hearing or disciplinary action against an Insured before a state or other licensing board or governmental regulatory body;
2. A civil or criminal proceeding in which the Insured is not a defendant but has been ordered to offer deposition testimony regarding treatment rendered to a patient;
3. A civil or criminal proceeding in which the Insured is not a party but has received a subpoena for record production regarding treatment rendered to a patient; or
4. A HIPAA proceeding.

**E. Legal/Media Expenses** means reasonable fees and costs of attorneys, experts and consultants incurred by the Insured in the investigation and defense of a **Legal Defense Proceeding**. **Legal/Media Expenses** also includes reasonable costs incurred by the Insured in the management of public relations with respect to a **Legal Defense Proceeding**, including reasonable fees and costs of third-party media consultants. Solely with respect to a HIPAA proceeding, **Legal/Media Expenses** shall include civil fines and penalties resulting from any HIPAA proceeding. **Legal/Media Expenses** shall not include any remuneration, salaries, overhead, fees, loss of earning reimbursement or benefit expenses of an Insured.

All other terms and conditions of this policy remain unchanged.



*This Endorsement Changes The Policy. Please Read It Carefully.*

## **VIOLATION OF CONSUMER PROTECTION LAWS EXCLUSION**

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This endorsement modifies insurance provided under the following:

### **MEDICAL PROFESSIONAL LIABILITY COVERAGE PART CLAIMS MADE AND REPORTED BASIS - BROAD COMMERCIAL GENERAL LIABILITY COVERAGE FORM - OCCURRENCE**

This insurance does not apply to any **Claim** based upon or arising directly, or indirectly, out of any actual or alleged violation of any federal, state or local consumer protection law(s), statute, ordinance or regulation including, but not limited to, the following:

1. The False Claims Act (FCA), including any amendment of or addition to such law;
2. The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), including any amendment of or addition to such law;
3. The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transaction Act (FACTA);
4. The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
5. The Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM Act), including any amendment of or addition to such law;
6. That addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information;
7. Any communication, distribution, publication, sending or transmission via telephone, telephone facsimile machine, computer or other telephonic or electronic devices, including claims asserted under the common law;
8. **Claims** brought by any state or federal government agency, or any person or entity on their behalf, including qui tam **claims**, seeking to enforce any consumer protection law; or
9. Actual or alleged violation of any laws, regulations or guidelines relating to the accessibility of the Insured's website.
10. Any biometric privacy law or any such similar law or statute anywhere in the world that governs or relates to the collection, use, safeguarding, handling, storage, retention or destruction of biometric identifiers, biometric data or biometric information of any kind, including but not limited to retina or iris scans, fingerprints, voiceprints, or scans of hand or face geometry.

All other terms and conditions of this policy remain unchanged.

This endorsement effective 3/1/2023  
Forms part of Policy Number LHC801468  
Issued to NURSELECT LLC  
by Landmark American Insurance Company

Endorsement No.: 17

**RSUI Group, Inc.**  
945 East Paces Ferry Road, Suite 1800  
Atlanta, GA 30326-1160

**HOME HEALTH CARE, NURSE REGISTRY, INFUSION  
THERAPY OR OTHER MEDICAL STAFFING SUPPLEMENTAL  
APPLICATION**

1. Name of Applicant: \_\_\_\_\_
2. Type of Firm (check all that apply): ☐ Home Health Care ☐ Infusion Therapy ☐ Visiting Nurse Agency  
☐ Nurse Registry ☐ Other Medical Staffing (specify): \_\_\_\_\_
3. Date Established: \_\_\_\_\_
4. Location(s) where services are provided (total must be 100%) \_\_\_\_\_% Home \_\_\_\_\_% Hospice  
\_\_\_\_\_% Nursing Home \_\_\_\_\_% Assisted Living Facility \_\_\_\_\_% Hospital \_\_\_\_\_% Clinic/Doctors Office  
\_\_\_\_\_% Adult Day Care \_\_\_\_\_% Correctional Facility \_\_\_\_\_% Other Facility (specify): \_\_\_\_\_
5. Do you provide any of the following services:  
Pediatric Care? Describe: \_\_\_\_\_ Yes ☐ No ☐  
Pediatric Ventilator/Trach Care? Describe: \_\_\_\_\_ Yes ☐ No ☐  
Live-In Care? Describe: \_\_\_\_\_ Yes ☐ No ☐
6. Employees/Independent Contractors – Annual Staffing:  

<u>Type of Employee/Independent Contractor</u>	<u>No. Full-Time</u>	<u>No. Part-Time</u>	<u>Billable hours Per Year</u>
Employed Registered Nurse	_____	_____	_____
Contracted Registered Nurse	_____	_____	_____
Employed Licensed Practical Nurse	_____	_____	_____
Contracted Licensed Practical Nurse	_____	_____	_____
Employed Certified Nurse Assistant	_____	_____	_____
Contracted Certified Nurse Assistant	_____	_____	_____
Employed Nurse Practitioner/Physician Assistant	_____	_____	_____
Contracted Nurse Practitioner/Physician Assistant	_____	_____	_____
Employed Companion/Home Health Aide	_____	_____	_____
Contracted Companion/Home Health Aide	_____	_____	_____
Employed Social Worker	_____	_____	_____
Contracted Social Worker	_____	_____	_____
Employed Physical Therapist	_____	_____	_____
Contracted Physical Therapist	_____	_____	_____
Employed Other Medical (specify)	_____	_____	_____
Contracted Other Medical (specify)	_____	_____	_____
7. Please provide a copy of the applicant's credentialing procedures and background check procedures.
8. Are drug, alcohol and sexual abuse screening or testing conducted? (Please provide full details) Yes ☐ No ☐

9. Are criminal background checks conducted in all states? (Please provide full details) Yes ☐ No ☐

10. Anticipated payroll amount for the next 12 months: \_\_\_\_\_

11. Does the Applicant warrant that all employed and contracted physicians, surgeons and dentists Yes ☐ No ☐  
maintain their own medical malpractice professional liability insurance coverage and confirm with a certificate of insurance or  
declarations page? If No, please provide details.

### REPRESENTATIONS

I understand that the information submitted herein becomes a part of my professional liability application and is subject to the same warranty and conditions.

Must be signed and dated by an Owner, Partner or Principal as duly authorized on behalf of the Applicant.

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Signature of the Applicant

Title

Date

**RSUI Group, Inc.**  
945 East Paces Ferry Road, Suite 1800  
Atlanta, GA 30326-1160

**RENEWAL APPLICATION FOR MISCELLANEOUS  
MEDICAL PROFESSIONAL LIABILITY INSURANCE  
(CLAIMS-MADE FORM)**

**General Applicant Information**

1. Name of Applicant: \_\_\_\_\_
2. Any changes in Address? ☐ Yes ☐ No (if yes, please complete the below)  
Principal Address: \_\_\_\_\_
3. City: \_\_\_\_\_ County: \_\_\_\_\_ State: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Website: \_\_\_\_\_

**Applicant Practice**

4. Any change in the applicant's professional activities for which coverage is desired? (if yes, please describe below) ☐ Yes ☐ No  
\_\_\_\_\_
5. Does the Applicant provide any Correctional Medicine Services? ☐ Yes ☐ No
6. In what states is the Applicant registered and licensed to practice? \_\_\_\_\_
7. During the past 12 months, has the applicant acquired or been acquired by another company? ☐ Yes ☐ No  
If yes please describe below  
\_\_\_\_\_
8. State sources and amounts of total revenue:
- | Source                      | Amount Last Policy Year | This Policy Year |
|-----------------------------|-------------------------|------------------|
| a. Charitable Contributions | \$ _____                | \$ _____         |
| b. Government Funding       | \$ _____                | \$ _____         |
| c. Fee for Services         | \$ _____                | \$ _____         |
| d. _____                    | \$ _____                | \$ _____         |
| e. _____                    | \$ _____                | \$ _____         |
| TOTAL GROSS REVENUE:        | \$ _____                | \$ _____         |
9. Number of patient encounters last 12 months (\_\_\_\_\_) and/or patient tests carried out (\_\_\_\_).  
(NOTE: "Patient encounters" refers to number of *visits* – not number of patients.)
10. Number of estimated patient encounters the next 12 months (\_\_\_\_\_) and/or patient tests carried out (\_\_\_\_).  
(NOTE: "Patient encounters" refers to number of *visits* – not number of patients.)



11. If applicant has a training school, complete the following.

Specify profession for which students are being trained	Max No. of students per session	No. of sessions per year	% of time involved in clinical setting	Number of students	Qualifications of faculty (eg. MD, RN, PhD)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

12. List the number and type of employees, volunteers or independent contractors, their billable hours, and whether or not they carry individual medical malpractice coverage for their services on behalf of the entity.

	Employees	Volunteers	Independent Contractors	Billable Hours	Insured on own Med Mal Policy
Aestheticians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Chiropractors	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Dieticians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
EMT's	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Laboratory Technicians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse, Aides	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse Anesthetists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurses, Licensed Practical	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse Midwives	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse Practitioner	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse, Registered	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Opticians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Optometrists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Paramedics	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Perfusionists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Pharmacists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Pharmacy Technicians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physical/Occupational/Speech Therapists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physical/Occupational/Speech Therapist Assistants	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physician's Assistants	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physicians – Minor Surgery	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physicians – No Surgery	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Psychologists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Respiratory Therapists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Social Workers	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Other: _____	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No

13. Does the applicant maintain any beds for overnight occupancy? (If yes, total number): \_\_\_\_\_

What is the average length of stay? \_\_\_\_\_

14. Does the Applicant warrant that all employed and contracted physicians, surgeons and dentists maintain their own medical malpractice professional liability insurance coverage and confirm with a certificate of insurance or declarations page? ☐ Yes ☐ No  
If no, please attached explanation.

### Applicant History

15. Is the applicant currently insured under a Commercial General Liability Policy? ☐ Yes ☐ No  
If yes, please give details:

Insurance Company	Type of Coverage	Limits BI	Limits PD	From	To
_____	_____	_____	_____	_____	_____

16. In the past twelve (12) months, has any professional liability claim or suit been made against the Applicant or any of its predecessor firms? Please complete the **Claim Supplement** and provide currently valued company loss runs ☐ Yes ☐ No  
If "Yes", how many? \_\_\_\_\_

17. Have all matters in Question 15. been reported to RSUI or to the Applicant's former or current insurer(s) or to the former Insurer of any predecessor firm or former insurer of a current member of the Firm? ☐ Yes ☐ No

18. Has any principal, owner, partner or employee for whom coverage is sought been the subject of a disciplinary complaint made to any court, administrative agency or regulatory body? (If "yes", provide full details and documentation) ☐ Yes ☐ No

### Representations

The Applicant declares that the above statement and representations are true and correct, and that no facts have been suppressed or misstated. All written statements and materials furnished to the Company, in conjunction with this application will be incorporated by reference into this application and made part hereof.

This application does not bind the Applicant to buy, or the Company to issue the insurance, but it is agreed that this form shall be the basis of the contract should a policy be issued, and it will be attached to and made part of the policy. The undersigned Applicant declares that if the information supplied on this application changes between the dates of this application and the time when the policy is issued, the Applicant will immediately notify the company of such changes, and the Company may withdraw or modify any outstanding quotations and/or authorization or agreement to bind the insurance.

\_\_\_\_\_  
Signature of the Insured, Owner, Partner or Principal

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Producer

Your policy has been signed on our behalf by our President and by our Secretary. However, your policy will not be binding on us unless it is also countersigned by one of our duly authorized agents.

A handwritten signature in black ink, appearing to read "Andrew J. Whittington". The signature is fluid and cursive, with a large, stylized "W" at the end.

President

**RSUI Indemnity Company**  
**Landmark American Insurance Company**  
**Covington Specialty Insurance Company**

A handwritten signature in black ink, appearing to read "Ronald E. Hinkle". The signature is cursive and somewhat stylized, with a long horizontal line extending from the end.

Secretary

**RSUI Indemnity Company**  
**Landmark American Insurance Company**  
**Covington Specialty Insurance Company**



*A member of Alleghany Insurance Holdings LLC*



**RSUI Group, Inc.**  
945 East Paces Ferry Road, Suite 1800  
Atlanta, GA 30326-1160

**HOME HEALTH CARE, NURSE REGISTRY, INFUSION  
THERAPY OR OTHER MEDICAL STAFFING SUPPLEMENTAL  
APPLICATION**

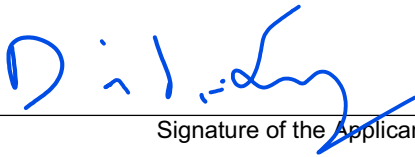
1. Name of Applicant: NurSelect, LLC
2. Type of Firm (check all that apply): ☐ Home Health Care ☐ Infusion Therapy ☐ Visiting Nurse Agency  
☐ Nurse Registry ☒ Other Medical Staffing (specify): Long-Term Care Facilities
3. Date Established: 03/12/2019
4. Location(s) where services are provided (total must be 100%) 0 % Home 0 % Hospice  
70 % Nursing Home 30 % Assisted Living Facility 0 % Hospital 0 % Clinic/Doctors Office  
0 % Adult Day Care 0 % Correctional Facility 0 % Other Facility (specify):
5. Do you provide any of the following services:
- Pediatric Care? Describe: \_\_\_\_\_ Yes ☐ No ☒
- Pediatric Ventilator/Trach Care? Describe: \_\_\_\_\_ Yes ☐ No ☒
- Live-In Care? Describe: \_\_\_\_\_ Yes ☐ No ☒
6. Employees/Independent Contractors – Annual Staffing:
- | Type of Employee/Independent Contractor                    | No. Full-Time | No. Part-Time | Billable hours<br>Per Year |
|--|---------------|---------------|----------------------------|
| Employed Registered Nurse                                  | <u>0</u>      | <u>2</u>      | <u>516.00</u>              |
| Contracted Registered Nurse                                | _____         | _____         | _____                      |
| Employed Licensed Practical Nurse                          | <u>6</u>      | <u>22</u>     | <u>22,607.75</u>           |
| Contracted Licensed Practical Nurse                        | _____         | _____         | _____                      |
| Employed Certified Nurse Assistant                         | <u>4</u>      | <u>37</u>     | <u>37,007.00</u>           |
| Contracted Certified Nurse Assistant                       | _____         | _____         | _____                      |
| Employed Nurse Practitioner/Physician Assistant            | _____         | _____         | _____                      |
| Contracted Nurse Practitioner/Physician Assistant          | _____         | _____         | _____                      |
| Employed Companion/Home Health Aide                        | _____         | _____         | _____                      |
| Contracted Companion/Home Health Aide                      | _____         | _____         | _____                      |
| Employed Social Worker                                     | _____         | _____         | _____                      |
| Contracted Social Worker                                   | _____         | _____         | _____                      |
| Employed Physical Therapist                                | _____         | _____         | _____                      |
| Contracted Physical Therapist                              | _____         | _____         | _____                      |
| Employed Other Medical (specify) <u>Certified Med Tech</u> | <u>0</u>      | <u>1</u>      | <u>500.00</u>              |
| Contracted Other Medical (specify)                         | _____         | _____         | _____                      |
7. Please provide a copy of the applicant's credentialing procedures and background check procedures.
8. Are drug, alcohol and sexual abuse screening or testing conducted? (Please provide full details) Yes ☒ No ☐

9. Are criminal background checks conducted in all states? (Please provide full details) Yes ☒ No ☐
10. Anticipated payroll amount for the next 12 months: \$2,250,000
11. Does the Applicant warrant that all employed and contracted physicians, surgeons and dentists maintain their own medical malpractice professional liability insurance coverage and confirm with a certificate of insurance or declarations page? If No, please provide details. Yes ☐ No ☐

### REPRESENTATIONS

I understand that the information submitted herein becomes a part of my professional liability application and is subject to the same warranty and conditions.

Must be signed and dated by an Owner, Partner or Principal as duly authorized on behalf of the Applicant.



Signature of the Applicant

President

Title

01/26/2023

Date

**RSUI Group, Inc.**  
945 East Paces Ferry Road, Suite 1800  
Atlanta, GA 30326-1160

**RENEWAL APPLICATION FOR MISCELLANEOUS  
MEDICAL PROFESSIONAL LIABILITY INSURANCE  
(CLAIMS-MADE FORM)**

**General Applicant Information**

1. Name of Applicant: NurSelect, LLC
2. Any changes in Address? ☐ Yes ☐ No (if yes, please complete the below)  
Principal Address: 1829 New Holland Rd. Suite 13
3. City: Reading County: Berks State: PA Zip Code: 19607  
Website: www.nurselectstaffing.com

**Applicant Practice**

4. Any change in the applicant's professional activities for which coverage is desired? (if yes, please describe below) ☐ Yes ☒ No
5. Does the Applicant provide any Correctional Medicine Services? ☐ Yes ☒ No
6. In what states is the Applicant registered and licensed to practice? Pennsylvania
7. During the past 12 months, has the applicant acquired or been acquired by another company? ☐ Yes ☒ No  
If yes please describe below
8. State sources and amounts of total revenue:
- | Source                      | Amount Last Policy Year | This Policy Year       |
|-----------------------------|-------------------------|------------------------|
| a. Charitable Contributions | \$ <u>0</u>             | \$ <u></u>             |
| b. Government Funding       | \$ <u>0</u>             | \$ <u></u>             |
| c. Fee for Services         | \$ <u>2,881,700.47</u>  | \$ <u>3,000,000.00</u> |
| d. <u></u>                  | \$ <u>0</u>             | \$ <u>0</u>            |
| e. <u></u>                  | \$ <u></u>              | \$ <u></u>             |
| <b>TOTAL GROSS REVENUE:</b> | \$ <u>2,881,700.47</u>  | \$ <u>3,000,000.00</u> |
9. Number of patient encounters last 12 months ( 7542 ) and/or patient tests carried out ( 0 ).  
(NOTE: "Patient encounters" refers to number of *visits* – not number of patients.)
10. Number of estimated patient encounters the next 12 months ( 8000 ) and/or patient tests carried out ( 0 ).  
(NOTE: "Patient encounters" refers to number of *visits* – not number of patients.)

11. If applicant has a training school, complete the following.

Specify profession for which students are being trained	Max No. of students per session	No. of sessions per year	% of time involved in clinical setting	Number of students	Qualifications of faculty (eg. MD, RN, PhD)
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

12. List the number and type of employees, volunteers or independent contractors, their billable hours, and whether or not they carry individual medical malpractice coverage for their services on behalf of the entity.

	Employees	Volunteers	Independent Contractors	Billable Hours	Insured on own Med Mal Policy
Aestheticians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Chiropractors	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Dieticians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
EMT's	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Laboratory Technicians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Nurse, Aides	40	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse Anesthetists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurses, Licensed Practical	29	_____	_____	_____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Nurse Midwives	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse Practitioner	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Nurse, Registered	1	_____	_____	_____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Opticians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Optometrists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Paramedics	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Perfusionists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Pharmacists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Pharmacy Technicians	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physical/Occupational/Speech Therapists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physical/Occupational/Speech Therapist Assistants	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physician's Assistants	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physicians – Minor Surgery	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Physicians – No Surgery	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Psychologists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Respiratory Therapists	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Social Workers	_____	_____	_____	_____	<input type="checkbox"/> Yes <input type="checkbox"/> No
Other: <u>Certified Med Techs</u>	1	_____	_____	_____	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No



13. Does the applicant maintain any beds for overnight occupancy? (If yes, total number): \_\_\_\_\_

What is the average length of stay? \_\_\_\_\_

14. Does the Applicant warrant that all employed and contracted physicians, surgeons and dentists maintain their own medical malpractice professional liability insurance coverage and confirm with a certificate of insurance or declarations page? ☐ Yes ☒ No  
If no, please attached explanation.

### Applicant History

15. Is the applicant currently insured under a Commercial General Liability Policy? ☐ Yes ☒ No  
If yes, please give details:

Insurance Company	Type of Coverage	Limits BI	Limits PD	From	To
_____	_____	_____	_____	_____	_____

16. In the past twelve (12) months, has any professional liability claim or suit been made against the Applicant or any of its predecessor firms? Please complete the **Claim Supplement** and provide currently valued company loss runs ☐ Yes ☒ No  
If "Yes", how many? \_\_\_\_\_


17. Have all matters in Question 15. been reported to RSUI or to the Applicant's former or current insurer(s) or to the former Insurer of any predecessor firm or former insurer of a current member of the Firm? ☐ Yes ☐ No

18. Has any principal, owner, partner or employee for whom coverage is sought been the subject of a disciplinary complaint made to any court, administrative agency or regulatory body? (If "yes", provide full details and documentation) ☐ Yes ☒ No

### Representations

The Applicant declares that the above statement and representations are true and correct, and that no facts have been suppressed or misstated. All written statements and materials furnished to the Company, in conjunction with this application will be incorporated by reference into this application and made part hereof.

This application does not bind the Applicant to buy, or the Company to issue the insurance, but it is agreed that this form shall be the basis of the contract should a policy be issued, and it will be attached to and made part of the policy. The undersigned Applicant declares that if the information supplied on this application changes between the dates of this application and the time when the policy is issued, the Applicant will immediately notify the company of such changes, and the Company may withdraw or modify any outstanding quotations and/or authorization or agreement to bind the insurance.

  
Signature of the Insured, Owner, Partner or Principal

President

Title

01/26/2023

Date

Liberty Insurance

Producer

# EXHIBIT 7

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
CIVIL DIVISION**

**LANDMARK AMERICAN INSURANCE  
COMPANY,**

**Civil Action No. 5:24-CV-01412**

**PLAINTIFF,**

**v.**

**NURSELECT, LLC.,**

**DEFENDANT.**

**DEFENDANT'S ANSWERS TO PLAINTIFF'S INTERROGATORIES**

AND NOW, comes Defendant, Nurseselect, LLC, by and through its counsel, Dickie, McCamey & Chilcote, P.C., by Bryon R. Kaster, Esquire, and responds to Plaintiff's Interrogatories as follows:

1. Identify the person or persons answering these Interrogatories and state, with respect to each person, the Interrogatory or Interrogatories for which that person provided information. Identify the existence, location and description of all documents consulted, examined, or referred to in the preparation of the answers to these interrogatories.

**ANSWER:**

**The specific language of the discovery responses is that of counsel. In addition, any legal assertions are those of counsel. However, the factual information disclosed in any discovery response was obtained from documents identified in the discovery response and/or from Defendant and, specifically, David Shelly.**

2. Identify each person with knowledge or information relevant to the subject matter of this action, and state with particularity the subject matters as to which each such person has knowledge. With respect to each person, state that person's name, present or last known address, and telephone number.

**ANSWER:**

**Counsel for defendant asserts that Pennsylvania adheres to the “four corners” rule and that coverage is afforded based only upon the language the language set forth in the policy of insurance and the allegations in underlying complaint.**

**Regarding the allegations concerning the alleged receipt of the January 12, 2023 letter, David Shelly has knowledge of when he discovered and opened the e-mail.**

3. Identify and describe the legal and factual basis for Your fifth affirmative defense.

**ANSWER:**

**Counsel for defendant asserts that Pennsylvania adheres to the “four corners” rule and that coverage is afforded based only upon the language the language set forth in the policy of insurance and the allegations in underlying complaint.**

4. Identify and describe the legal and factual basis for Your sixth affirmative defense.

**ANSWER:**

**Upon learning of the underlying lawsuit, Defendant immediately notified Plaintiff.**



5. Identify and describe the legal and factual basis for Your eighth affirmative defense that "plaintiff owes defendant a duty of defense and indemnity[]".

**ANSWER:**

**Counsel for defendant asserts that Pennsylvania adheres to the "four corners" rule and that coverage is afforded based only upon the language the language set forth in the policy of insurance and the allegations in underlying complaint.**

6. Identify and describe the legal and factual basis for Your allegations in paragraphs 9 of Your Answer to the Complaint, including the allegation that "Defendant did not receive the letter on January 12, 2023[.]"

**ANSWER:**

**The referenced language does assert the factual basis. Moreover, Defendant did not receive the letter on January 12, 2023 because Defendant did not discover or open the e-mail on that date.**

7. Identify the email which contained/contains the January 12, 2023 Letter ("the email"). Concerning the email, also identify and describe:

- (a) The email address of Mr. Shelly;
- (b) The sender of the email and his/her email address;
- (c) Read receipts of the email, if any;
- (d) Inbox and/or other email-box in which the email was allegedly "discovered," as stated in paragraph 19 of Your Answer and in the September 13, 2023 email communication referenced in paragraph 19 of Your Answer;

- (e) Data concerning when the email was opened, sent, received, downloaded and/or forwarded; and
- (f) Any search conducted of Mr. Shelly's emails and/or any other Nurselect emails/email servers which concerned the Underlying Action and/or the January 12, 2023 Letter.

**ANSWER:**

**The factual information responsive to (a), (b), and (d) of this interrogatory is included in the documents provided to Plaintiff's counsel via e-mail on November 8, 2024. Regarding any "read receipts", that information would need to come from the sender of the e-mail. Defendant is unaware of any such receipt, and counsel for Defendant spoke with the sender of the e-mail and was informed that there was no such receipt. Regarding any "data" or "search", it is unknown what specific information Plaintiff is looking for. Defendant is unaware of whether such data is available. As for any search, David Shelly conducted a search of the employee's name on September 12, 2023 or September 13, 2023 and discovered the e-mail containing the January 12, 2023 letter, which was previously unread. The email was forwarded to Anthony Viola, Claims Manager of Liberty Insurance Agency on October 4, 2023 and to defense counsel.**

8. Identify and describe any and all communications, prior to the service of the Underlying Action, between You and Brethren Village and/or Ms. McDowell concerning Ms. McDowell, Ms. Wiggins and/or the allegations in the Underlying Action.

**ANSWER:**

**All such communications were included in the documents provided to Plaintiff's counsel via e-mail on November 8, 2024.**

9. Identify and produce the full Staffing Agreement between You and Brethren Village.

**ANSWER:**

**The staffing agreement was included in the documents provided to Plaintiff's counsel via e-mail on November 8, 2024.**

10. Identify any communications concerning indemnification/ liability apportionment between Nurseselect and Brethren Village, including but not limited to indemnification or liability apportionment pursuant to the Staffing Agreement.

**ANSWER:**

**Defendant is unaware of any specific communications.**

11. Identify all individuals whom Defendant expects to call as a witness at trial and their relevant knowledge of the claims and allegations in this action.

**ANSWER:**

**Counsel for defendant asserts that Pennsylvania adheres to the "four corners" rule and that coverage is afforded based only upon the language the language set forth in the policy of insurance and the allegations in underlying complaint. As such, Defendant does not believe that any witnesses need to be called. However, should the Court decide that there is a factual issue in this case, Defendant will supplement this response accordingly.**

Respectfully submitted,

**DICKIE, McCAMEY & CHILCOTE, P.C.**

Date: November 12, 2024

By: /s/Bryon R. Kaster, Esquire  
Bryon R. Kaster, Esquire  
Attorney I.D. No. 91707  
300 Corporate Center Drive  
Suite 103-D  
Camp Hill, PA 17011-9927  
717-731-4800  
[BKaster@dmclaw.com](mailto:BKaster@dmclaw.com)  
*Attorney for Defendant, Nurselect, LLC*

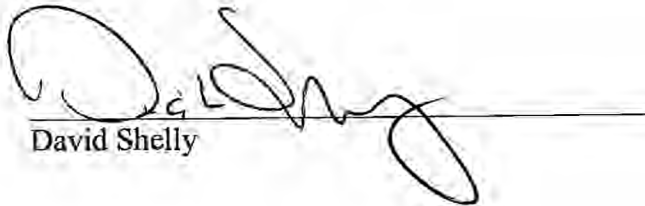


**VERIFICATION**

I, David Shelly, hereby verify that the facts set forth in Defendant's Answers to Plaintiff's Interrogatories are true and correct to the best of our knowledge, information and belief.

I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date:

  
David Shelly

**CERTIFICATE OF SERVICE**

AND NOW, this 12<sup>th</sup> day of November, 2024, I, Bryon R. Kaster, hereby certify that the foregoing ***Answers to Interrogatories*** has been electronically filed and is available for viewing and downloading from the ECF system by the undersigned counsel of record. Accordingly, service has been effectuated pursuant to I.R.5.7.

Date: November 12, 2024

| By: */s/ Bryon R. Kaster, Esquire*

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA  
CIVIL DIVISION

LANDMARK AMERICAN INSURANCE  
COMPANY,

Civil Action No. 5:24-CV-01412

PLAINTIFF,

v.

NURSELECT, LLC.,

DEFENDANT.

**DEFENDANT'S RESPONSES TO PLAINTIFF'S  
REQUEST FOR PRODUCTION OF DOCUMENTS**

AND NOW, comes Defendant, Nurseselect, LLC, by and through its counsel, Dickie, McCamey & Chilcote, P.C., by Bryon R. Kaster, Esquire, and responds to Plaintiff's Request for Production of Documents as follows:

1. Produce any document identified, relied upon, referred to or in any way related to Defendant's Response to Plaintiff's First Set of Interrogatories.

**RESPONSE: All documents responsive to this request were provided to counsel for Plaintiff on Friday, November 8, 2024 via e-mail.**

2. Produce all documents or categories of documents required to be identified in Your Rule 26 Initial Disclosures in this action.

**RESPONSE: In accordance with Defendant's disclosure obligations, Defendant hereby discloses and expressly relies upon the policy of insurance and underlying complaint.**

3. Produce all documents concerning, or which You contend support or refute, Your responses, contentions, and defenses set forth in Your Answer to the Complaint.

**RESPONSE: All documents responsive to this request were provided to counsel for Plaintiff on Friday, November 8, 2024 via e-mail.**

4. Produce all documents concerning, or which You contend support or refute, the claims and allegations set forth in the Complaint.

**RESPONSE:** All documents responsive to this request were provided to counsel for Plaintiff on Friday, November 8, 2024 via e-mail.

5. Produce all documents concerning insurance coverage for the Underlying Action.

**RESPONSE:** It is unknown what is meant by “all documents concerning insurance coverage,” but counsel for defendant asserts that Pennsylvania adheres to the “four corners” rule and that coverage is afforded based up upon the language the language set forth in the policy of insurance and the allegations in underlying complaint.

6. Produce all documents concerning Your contention that "Plaintiff owes Defendant a duty of defense and indemnity[]" as set forth in Your eighth affirmative defense.

**RESPONSE:** Counsel for defendant asserts that Pennsylvania adheres to the “four corners” rule and that coverage is afforded based only upon the language the language set forth in the policy of insurance and the allegations in underlying complaint.

7. Produce all documents concerning Your contention that "Defendant did not receive the letter on January 12, 2023 []" as set forth in paragraph 9 of Your Answer to the Complaint.

**RESPONSE:** Defendant has produced the e-mail, and the referenced pleadings assert that the letter was not received on January 12, 2023. Defendant is presently unaware of any other documents.

8. Produce documents in Your possession concerning the January 12, 2023 Letter, including but not limited to:

- (a) The email which contained the January 12, 2023 Letter as an attachment ("the email");
- (b) The data concerning when the email was opened, sent and received;
- (c) The data concerning what inbox and/or other email box the email was/is present in;
- (d) Any and all forwards, downloads, and/or other communications concerning the email and/or the January 12, 2023 Letter; and
- € Any search conducted on Mr. Shelly's email boxes and/or the Nurseselect email server and/or any other Nurseselect employee email box concerning the Underlying Action and the January 12, 2023 Letter.

**RESPONSE:** Defendant has produced the e-mail, as well as the only forward of the e-mail. As for the “data”, Defendant has agreed to make the email available for a search of discoverable information, but, otherwise, Defendant has no such documents. Defendant is unaware of any documents regarding the “search conducted....”



9. Produce all communications between You and Brethren Village and/or attorneys for Brethren Village concerning Ms. McDowell and/or Ms. Wiggins, before service on You of the Underlying Action.

**RESPONSE: All documents responsive to this request were provided to counsel for Plaintiff on Friday, November 8, 2024 via e-mail.**

10. Produce all communications between You and Ms. McDowell concerning Ms. Wiggins, before service on You of the Underlying Action.

**RESPONSE: All documents responsive to this request were provided to counsel for Plaintiff on Friday, November 8, 2024 via e-mail.**

11. Produce the Staffing Agreement, between Brethren Village and Nurselect.

**RESPONSE: All documents responsive to this request were provided to counsel for Plaintiff on Friday, November 8, 2024 via e-mail.**

12. Produce any communications concerning the Apportionment of Liability provision in the Staffing Agreement in relation to the Underlying Action and/or the present action.

**RESPONSE: Defendant is unaware of any communications specifically concerning the Apportionment of Liability provision of the Staffing Agreement.**

13. Produce any and all documents, concerning any information supporting or refuting any of the allegations in the Complaint, or which Nurselect reasonably believes may be introduced into evidence or to which Nurselect intends to refer at the trial of this matter or which Nurselect intends to identify or use during any deposition taken in this action.

**RESPONSE: All documents responsive to this request were provided to counsel for Plaintiff on Friday, November 8, 2024 via e-mail.**

14. If a privilege is being asserted with respect to any of the above requests, produce a privilege log of the documents withheld.

**RESPONSE: N/A**

15. Produce the digital version of any documents that fall within the scope of any request herein that do not exist in hard-copy or paper form.

**RESPONSE: Defendant has already done so.**

Respectfully submitted,

**DICKIE, McCAMEY & CHILCOTE, P.C.**

Date: November 12, 2024

By: /s/Bryon R. Kaster, Esquire  
Bryon R. Kaster, Esquire  
Attorney I.D. No. 91707  
300 Corporate Center Drive  
Suite 103-D  
Camp Hill, PA 17011-9927  
717-731-4800  
[BKaster@dmclaw.com](mailto:BKaster@dmclaw.com)  
*Attorney for Defendant, Nurselect, LLC*

**VERIFICATION**

I, David Shelly, hereby verify that the facts set forth in Defendant's Answers to Plaintiff's Request for Production of Documents are true and correct to the best of our knowledge, information and belief.

I understand that false statements herein are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

Date:

  
David Shelly

**CERTIFICATE OF SERVICE**

AND NOW, this 12<sup>th</sup> day of November, 2024, I, Bryon R. Kaster, hereby certify that the foregoing ***Answers to Request for Production of Documents*** have been served upon all counsel of record, as follows:

Date: November 12, 2024

| By: /s/ Bryon R. Kaster, Esquire



# EXHIBIT 8



## SUPPLEMENTAL STAFFING AGREEMENT

This Supplemental Staffing Agreement ("Agreement") is entered into the **22nd** day of **September, 2020** by and between **Brethren Village Retirement Community**, with its physical address at **3001 Lititz Pike in Lititz, PA 17543** ("Client"); and NurSelect, LLC, a Pennsylvania business with its administrative offices located at 630 Freedom Business Center Drive, Third Floor, King of Prussia, PA 19406 ("NurSelect").

### RECITALS

A. NurSelect is a health care employment service engaged in the business of recruiting and placing qualified nursing personnel, such as, certified nursing assistants, licensed practical nurses, and registered nurses (collectively, "**NurSelect Personnel**") on contractual assignments on a per-diem or temporary basis (the "**Services**").

B. The Client desires NurSelect, and NurSelect agrees, upon the terms and conditions more fully set forth herein, to provide NurSelect Personnel to the Client to perform the Services.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

### ARTICLE I – THE SERVICES; NURSELECT PERSONNEL

1.1 Staffing; Services. Upon receipt of a request by the Client for NurSelect Personnel, and according to the availability of the requested NurSelect Personnel, NurSelect will provide the NurSelect Personnel to the Client, from time to time, at the locations requested, to provide the Services in a quantity and with the qualifications specified by the Client in said request. Services will be provided by NurSelect Personnel that (a) meet the highest professional standards and principles applicable to Services; and (b) shall be provided timely in accordance with the needs of the patient receiving the Services. Services shall be provided: (x) in accordance with federal, state and local laws, rules, ordinances and regulations; and (y) consistent with the policies and procedures of Client. Neither NurSelect, nor NurSelect Personnel shall do or omit to do anything that would jeopardize the licensure of the Client or its participation in governmental health programs, including Medicare and Medicaid.

1.2 Licensure and Certification of NurSelect Personnel. All NurSelect Personnel shall, at all times while performing the Services, have the appropriate nursing licenses, certifications and/or clinical experience, background checks, reference checks and any other certification or document required by law to provide the Services. From time to time, the Client may notify NurSelect of its need for NurSelect Personnel who possess a specialized certification and/or who have particular clinical experience to provide specialized services. Subject to the terms and conditions of this Agreement, NurSelect will provide NurSelect Personnel having the appropriate licenses, certification, and/or clinical experience required by applicable law to perform such specialized services. NurSelect shall keep and make available to the Client, upon written request by the Client, all licenses, certifications and other documentation verifying clinical experience and/or such other specification needed to furnish any of the Services. NurSelect shall comply with 28 Pa. Code Section 201.21.

1.3 Immigration Documentation. NurSelect Personnel shall have proper documentation required for compliance with applicable immigration laws. NurSelect shall make available to the Client, upon written request, copies of such documentation.

1.4 Immunizations. NurSelect shall ensure that NurSelect Personnel are in compliance with the following immunization requirements: (a) immunization for tetanus; (b) demonstration of a negative skin test or chest x-ray for tuberculosis; (c) factual documentation of immunizations for measles, mumps, rubella and chicken pox; (d) immunization for Hepatitis B; and (e) certification for education on the blood borne pathogens standard and the TB standard. NurSelect shall make available to the Client, upon written request, copies of documentation evidencing compliance with the foregoing.

1.5 Criminal Background Checks. NurSelect conducts criminal background checks of all its employees prior to their employment with NurSelect. All NurSelect Personnel provided to the Client shall have passed a criminal background check satisfactory to the Client, and shall not have a criminal record which includes, but is not limited to, felony convictions or convictions for any crime involving moral turpitude, physical or sexual abuse, drug abuse or any other crime which would render NurSelect Personnel unfit for the Client's purposes. NurSelect shall provide the Client with copies of all criminal background checks for NurSelect Personnel upon written request.

1.6 HIPAA/Confidentiality Agreement. NurSelect will obtain require all NurSelect Personnel to execute and be bound by a HIPAA/Confidentiality Agreement and a Business Associate Agreement to endure all NurSelect Personnel observe the confidentiality and HIPAA provisions set forth in this Agreement. NurSelect will provide copies of such Agreements to Client upon request.

1.7 Anti-Kickback; Government Health Programs. NurSelect represents and warrants that it and its employees have not engage in, and during the Term, shall not engage in, any activities prohibited under the federal anti-kickback statute (Social Security Act Section 1128B, 42 U.S.C. Sections 1320a-7, 1320a-7a, 1320a-7b). NurSelect represents and warrants that it and its employees have not been excluded from the Medicare, Medicaid and/or other federal healthcare programs. In the event NurSelect or its employees is under investigation by the United States Department of Health and Human Services' Office of Inspector General for a claim or action that could result in the exclusion of NurSelect or its employees from the Medicare, Medicaid or other governmental health program, NurSelect shall promptly inform the Client but only after receiving sufficient information to substantiate the fact of the investigation.

1.8 Review of Documentation by the Client. The Client shall review documentation on the above requirements prior to the start date for NurSelect Personnel. In the event the Client is not satisfied with the said documentation, Client shall immediately inform NurSelect.

1.9 Compliance with the Client's Policies. The Client shall make available and explain to all NurSelect Personnel all applicable rules, regulations, procedures and policies pursuant to the Client's organization and operation of the Client, including, without limitation, rules, regulations, procedures and policies adopted by the Client's medical staff and nursing department (collectively, the "**Policies**"). The Client shall also be responsible to ensure that all NurSelect Personnel are promptly made aware of any updates or changes to the Policies. NurSelect Personnel providing the Services under this Agreement shall materially observe all Policies.



1.10 Replacement of NurSelect Personnel. If at any time the Client is dissatisfied with the service provided by any NurSelect Personnel, the Client shall notify NurSelect of its dissatisfaction, at which time, and upon receipt of such notice, NurSelect will make commercially reasonable efforts to promptly provide a replacement.

1.11 Meetings, Orientation and Training. The Client may, from time to time, require that the NurSelect Personnel attend staff meetings, receive training and/or undergo orientation related to the particular Services requested by the Client. NurSelect will bill the Client for the time NurSelect Personnel spend in staff or other Client meetings, and for time spent receiving training and orientation. Training and/or orientation shall be provided to the NurSelect Personnel at no cost to NurSelect, including, without limitation, the cost of any instructors in providing training.

1.12 Record Maintenance. NurSelect Personnel shall provide accurate and complete written documentation on individual patient charts, including treatment and progress notes, in accordance with the Client's requirements, the requirements of applicable federal and state governmental agencies and the requirements of third-party reimbursement sources such as insurers. NurSelect Personnel shall maintain accurate records of Services provided to the Client's patients in accordance with accepted professional standards and practices and the requirements of the Client.

1.13 Exclusion Checks. NurSelect shall, monthly during the term, check the Pennsylvania Medi-Check List maintained by the Pennsylvania Department of Public Welfare, the list of Excluded Individuals/Entities maintained by the Office of the Inspector General of the federal Department of Health and Human Services and the Excluded Parties List System maintained by the General Services Administration, to ensure that neither NurSelect, nor any NurSelect Personnel is included in any of the abovementioned lists. To the extent any NurSelect Personnel has worked in a state other than the Commonwealth of Pennsylvania, NurSelect will check state Medicaid exclusion databases (to the extent available) for such states where NurSelect Personnel worked. In the event NurSelect or any NurSelect Personnel are listed on any of the abovementioned lists, NurSelect will immediately notify the Client and remove such person or persons from providing Services to the Client.

1.14 Client Responsibilities.

a. Client will properly supervise NurSelect Personnel and shall be solely responsible for its business operations and practices, products, services and intellectual property.

b. Client will properly supervise, control and safeguard its premises, processes and systems, and shall not: (i) permit NurSelect Personnel to operate any vehicle or mobile equipment while providing Services; (ii) entrust with, or place NurSelect Personnel in charge of, unattended premises or facilities, cash, checks, keys, credit cards, merchandise or confidential or trade secret information, negotiable instruments or other valuables without NurSelect's express written consent, or unless otherwise set forth in the job description provided to NurSelect for particular Services to be provided by NurSelect Personnel.

c. Client shall provide NurSelect Personnel with a safe work environment and shall provide NurSelect Personnel with appropriate information, training and safety equipment with respect to any hazardous substances or conditions to which NurSelect Personnel may be exposed at the Client in connection with Services.



d. Client shall not alter, modify or otherwise change the job description for any NurSelect Personnel without first informing NurSelect and receiving NurSelect's written approval.

e. Client shall be solely responsible for billing its patients and/or their insurers or other third-party reimbursement sources for Services provided to such patients by NurSelect Personnel. NurSelect is not responsible for Client's inability to obtain payment in full or in part from its patients and/or their insurers or other third-party reimbursement sources.

f. Client shall have primary responsibility for maintaining all patient records. To the extent reasonably necessary to accomplish Services, Client shall make available to NurSelect Personnel all patient records necessary for the proper evaluation and treatment of its patients.

g. Client shall have the ultimate responsibility of ensuring that all Services provided hereunder: (i) shall meet applicable professional standards and principles; and (ii) be provided in a timely manner.

## ARTICLE II – PAYMENT FOR SERVICES

2.1 Invoices. NurSelect shall provide invoices to the Client on a weekly basis for the Services provided by NurSelect Personnel. The Client shall be billed at the hourly rates set forth in the Fee Schedule, attached hereto as Exhibit A and incorporated herein by reference. Invoices shall contain the following information: (i) the names of NurSelect Personnel providing Services; (ii) total applicable charges; (iii) dates and times worked by NurSelect Personnel; and (iv) such other information as the Client may reasonably request.

2.2 Payment for Services. The Client shall pay NurSelect for the Services of the NurSelect Personnel as reflected on such invoice within thirty (30) days of its receipt of said invoice. If payment is not received within such time, NurSelect reserves the right to add interest in the amount of one- and one-half percent (1.5%) per month to all outstanding balances remaining unpaid. In the event that payment for any invoice is not received within thirty (30) days of the date of such invoice, NurSelect may elect to terminate this Agreement immediately, without notice to the Client. Termination by NurSelect pursuant to this Section shall not relieve the Client of any obligation to pay any outstanding invoices. The Client agrees to pay all reasonable collection fees, including attorney and court fees, related to unpaid and uncured outstanding balances.

2.3 Rate Changes. NurSelect may, upon sixty (60) days' written notice to the Client, change the rates for the Services as set forth on Exhibit A. Said rate change shall become effective beginning on the sixty-first (61<sup>st</sup>) day after the said notice is provided to the Client.

2.4 Signatures of the Client's Personnel. The Client agrees and certifies that the signature of any of the Client's agents or employees on time slips of NurSelect Personnel is understood to be authorized by the Client and is binding upon the Client. The signature of any of the Client's agents or employees on any time slip conclusively certifies the Client's satisfaction with the Services performed and confirmation of the total number of hours worked.



2.5 Cancellation of Shifts. The Client agrees to notify NurSelect of all cancellations of shifts of NurSelect Personnel within a minimum of two (2) hours prior to the start of the scheduled shift of the affected NurSelect Personnel. If the Client fails to notify NurSelect of a shift cancellation within two (2) hours, the Client agrees to pay NurSelect the sum of two (2) hours' pay per NurSelect Personnel that was scheduled to work the cancelled shift at the applicable rate set forth in Exhibit A.

2.6 Holidays. NurSelect observes the following holidays: New Year's Day, Easter Sunday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Eve (2<sup>nd</sup> shift, only), Christmas Day and New Year's Eve (2<sup>nd</sup> shift, only). NurSelect will bill the Client 150% of the regular rate for all hours worked by NurSelect Personnel during any of the aforementioned holidays. For avoidance of confusion, holidays for night shift workers (typically from 11:00 PM to 7:00 AM) begin at 11:00 PM on the day immediately preceding the holiday.

2.7 Overtime. NurSelect Personnel are presumed to be non-exempt from laws requiring premium pay for overtime, holiday work or weekend work. In the event the Client requires NurSelect Personnel to work during holidays, overtime or weekends, and to the extent that federal or state law requires a premium to be paid to such NurSelect Personnel, NurSelect will invoice the Client at such premium for such time worked. By way of example, when federal or state law requires payment of 150% of the regular wage rate for work exceeding 40 hours per week, NurSelect will invoice the Client for 150% of its rate set forth on Exhibit A for such work exceeding 40 hours per week.

#### ARTICLE III - STATUS OF THE PARTIES

3.1 NurSelect Employees. It is expressly understood and agreed that all NurSelect Personnel shall not be considered employees or agents of the Client but instead shall be considered leased employees of NurSelect. Further, it is expressly understood and agreed by the parties that nothing contained in this Agreement shall be construed to create a joint venture, partnership, association or other affiliation or like relationship between the parties hereto, it being specifically agreed that their relationship is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement. NurSelect shall be solely responsible for paying NurSelect Personnel and providing NurSelect Personnel with employment benefits, if any, offered by NurSelect. NurSelect shall be solely responsible for providing unemployment insurance and workers compensation benefits to NurSelect Personnel. NurSelect shall be solely responsible to handle all unemployment and workers compensation claims involving NurSelect Personnel.

3.2 No Claims for Certain Benefits. NurSelect and its NurSelect Personnel shall not have any claim under this Agreement or otherwise against the Client for employee benefits offered by the Client to its employees, including, without limitation, vacation pay, paid sick leave, retirement benefits, social security, workers compensation, health, disability, or professional malpractice benefits of any kind. NurSelect will indemnify and hold the Client harmless from any and all claims and liability arising from claims relating to the failure of the Client to provide any such benefits to any NurSelect Personnel.

3.3 No Claims for Withholding. The Client shall not withhold, on behalf of NurSelect or any NurSelect Personnel, any sums for income tax, unemployment insurance, social security or other withholding pursuant to any applicable law or requirement of any governmental body. NurSelect shall solely be responsible for all required withholdings from NurSelect Personnel wages and for remitting the same to the applicable governmental and other parties. NurSelect shall indemnify and hold the Client harmless from any and all claims and/or liability arising from claims relating to the Client's failure to make any such withholdings on behalf of NurSelect or any NurSelect Personnel.



#### ARTICLE IV - INSURANCE

4.1 Insurance. NurSelect will purchase and maintain: (a) comprehensive general and professional liability insurance coverage with minimum limits of \$1,000,000 per occurrence and \$3,000,000; and (b) workers compensation insurance providing at least the minimum amount of coverage required by the Commonwealth of Pennsylvania. All policies shall be on a claim made basis and shall be placed with insurers licensed to do business in Pennsylvania.

4.2 Proof of Insurance. NurSelect shall, upon written request from the Client, provide to the Client certificates of insurance or other appropriate evidence of satisfaction of its obligations to maintain insurance as described in this Article. NurSelect agrees that it will notify the Client at least thirty (30) days in advance of cancellation, non-renewal, or adverse change in its insurance.

#### ARTICLE V - APPORTIONMENT OF LIABILITY AND DAMAGES INDEMNIFICATION

5.1 Apportionment of Liability. It is hereby stipulated and agreed between the Client and NurSelect that with respect to any claim or action arising out of the Services, each entity shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements or judgments resulting from negligence, actions or omissions of its own agents, officers, and employees.

5.2 Indemnification of Client. NurSelect agrees to indemnify and hold harmless the Client from and against any and all claims, demands, actions, settlements, or judgments, including reasonable attorneys' fees and litigation expenses, arising from: (a) NurSelect's breach of this Agreement; and (b) NurSelect Personnel's provision of the Services where such claims, demands, actions, settlements, or judgments arise from the negligence or willful misconduct of the NurSelect Personnel.

5.3 Indemnification of NurSelect. The Client agrees to indemnify and hold harmless NurSelect from and against any and all claims, demands, actions, settlements, or judgments, including reasonable attorneys' fees and litigation expenses where such claims, demands, actions, settlements, or judgments arise from the negligence or willful misconduct of the Client, its directors, officers, agents or employees.

#### ARTICLE VI - TERM AND TERMINATION

6.1 Term. The initial term of this Agreement shall commence on the date above first written ("**Commencement Date**") and shall continue for one (1) year from the Commencement Date ("**Term**"). Except as otherwise stated herein, the Term shall be automatically extended for one (1) additional year and so on from year to year until either NurSelect or the Client give to the other no less than thirty (30) days' written notice of termination prior to the end of the then-current Term.

6.2 Termination for Specific Breaches. Except as expressly provided elsewhere in this Agreement, in the event either party shall fail to satisfy its obligations under this Agreement, this Agreement may be terminated at the discretion of the non-breaching party by providing the breaching party with thirty (30) days' written notice notifying the breaching party of its breach and providing it with the opportunity to cure said breach ("**Termination Notice**"). If the breaching party fails to cure said breach within thirty (30) days of the Termination Notice, then this Agreement may, at the option of the non-breaching party, be terminated without any further notice from the non-breaching party on the thirty-first (31<sup>st</sup>) day after the date of the Termination Notice.

6.3 Survival of Obligations. Upon termination of this Agreement pursuant to the terms of this Article, neither party shall have any further obligation hereunder except for: (a) obligations accruing prior to the date of termination, and (b) obligations, promises, or covenants contained herein which are expressly made to extend beyond the date of termination. All indemnification obligations set forth herein shall survive the termination of this Agreement.

#### ARTICLE VII - CONFIDENTIAL INFORMATION

7.1 Non-disclosure of NurSelect's Confidential Information. NurSelect deems its methods and modes of operation, its performance hereunder, this Agreement and its client information to be confidential information ("**NurSelect's Confidential Information**"). The Client agrees not to disclose NurSelect's Confidential Information to outside parties except as required by law, and the Client shall disclose NurSelect's Confidential Information to Client personnel only on an as-needed basis with notice to the Client personnel of its confidential nature.

7.2 Non-disclosure of the Client's Confidential Information. The Client deems its methods and modes of operation, its performance hereunder, this Agreement and its patient information to be confidential information ("**Client's Confidential Information**"). NurSelect agrees not to disclose Client's Confidential Information to outside parties except as required by law and subject to the provisions of Article IX, and NurSelect shall disclose Client's Confidential Information to NurSelect Personnel only on an as-needed basis and with notice to such NurSelect Personnel of its confidential nature. Information obtained by NurSelect Personnel during the course of providing Services shall not be imputed to NurSelect. The Client shall require NurSelect Personnel to execute a confidentiality agreement between the Client and NurSelect Personnel to address the non-disclosure of the Client's Confidential Information by NurSelect Personnel.

#### ARTICLE VIII - NON-ENGAGEMENT COVENANT

8.1 Non-Solicitation of the Client's Employees. During the Term of this Agreement and for a period of one (1) year after its termination, NurSelect agrees it will not knowingly or directly solicit or encourage any of the Client's employees to discontinue their employment with the Client. NurSelect and the Client agree that any remedy at law for the breach of this Article shall be inadequate and that, in connection with such breach, the Client will be entitled, in addition to any other remedies, to temporary and permanent injunctive relief.

8.2 Non-Solicitation of NurSelect Employees. During the Term of this Agreement and for a period of one (1) year after its termination, the Client agrees it will not knowingly, directly or indirectly, solicit or encourage any NurSelect Personnel to discontinue his or her employment with NurSelect. The Client and NurSelect agree that any remedy at law for the breach of this Article shall be inadequate and that, in connection with such breach, NurSelect will be entitled, in addition to any other remedies, to temporary and permanent injunctive relief.

8.3 Employment of NurSelect Employees with Consent. Notwithstanding anything to the contrary herein, during the Term of this Agreement and for a period of one (1) year after its termination, the Client may hire any NurSelect Personnel with the prior written consent of NurSelect as either a "temporary-to-permanent" hire or as a "direct placement". If such consent is granted, the Client agrees to pay NurSelect the applicable amount set forth on the fee schedule attached hereto as Exhibit A within thirty (30) days from the date on which such NurSelect Personnel accepts employment with the Client.



ARTICLE IX – HEALTH INSURANCE PORTABILITY AND  
ACCOUNTABILITY ACT OF 1996 PROVISIONS

9.1 Definitions.

a. “Disclose” and “Disclosure” shall mean, with respect to Protected Health Information (defined herein), the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside of NurSelect’s internal operations.

b. “Protected Health Information” or “PHI” shall mean information, including demographic information, that (i) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; (ii) identifies the individual (or for which there is a reasonable basis for believing that the information can be used to identify the individual); and (iii) is received by NurSelect from or on behalf of the Client, or is created by NurSelect in the performance of this Agreement, or is made accessible to NurSelect by the Client.

c. “Use” or “Uses” shall mean, with respect to Protected Health Information, the sharing, employment, application, utilization, examination, or analysis of Protected Health Information within NurSelect’s internal operations.

d. “Privacy Regulations” shall mean the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder, including the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Parts 160 and 164.

9.2 Obligations of NurSelect. NurSelect shall not Use or Disclose PHI for any purpose except as provided in this Article. NurSelect:

a. shall Use and Disclose PHI as necessary or appropriate to perform the Services, as provided in this Article;

b. shall Disclose PHI to the Client upon request; and

c. may, as necessary for the proper management and administration of its business or to carry out its legal responsibilities:

i. Use PHI; and

ii. Disclose PHI if the Disclosure is required by applicable law, or NurSelect obtains reasonable assurance from the person or entity to whom the information is Disclosed that the PHI will be held confidentially and Used or Disclosed only as required by law or for the purpose for which it was Disclosed to the person or entity, and such person or entity agrees to notify NurSelect of any instances of which the person or entity is or becomes aware in which the confidentiality of the PHI has been breached.

9.3 Adequate Safeguards for PHI. NurSelect warrants that it shall implement and maintain appropriate safeguards to prevent the Use or Disclosure of PHI in any manner other than as permitted by this Article.

9.4 Reporting Non-Permitted Uses or Disclosure. In the event that any Use or Disclosure is made by NurSelect, its employees, representatives, agents, or subcontractors that is not specifically permitted by this Article, NurSelect shall report such Use or Disclosure to the Client. The initial report shall be made by telephone call to such employee or agent of the Client as the Client may designate (the "Privacy Officer") within forty-eight (48) hours from the time NurSelect becomes aware of any non-permitted Use or Disclosure, followed by a full written report to the Privacy Officer no later than ten (10) business days from the date NurSelect became aware of the non-permitted Use or Disclosure.

9.5 Availability of Internal Practices, Books, and Records to Government Agencies. NurSelect agrees to make its internal practices, books, and records relating to the Use and Disclosure of PHI available to the Secretary of the Federal Department of Health and Human Services for purposes of determining the Client's compliance with the Privacy Regulations. NurSelect shall immediately notify the Client of any requests made by the Secretary and provide the Client with copies of any documents produced in response to any such request.

9.6 Access to and Amendment of PHI. NurSelect shall: (a) make the PHI specified by the Client available to the individual(s) identified by the Client as being entitled to access and copy such PHI; and (b) make PHI available to the Client for the purpose of amendment and incorporation of such amendments into PHI, in compliance with applicable law. NurSelect shall provide such access and incorporate such amendments in compliance with applicable law within the time and in the manner specified by the Client.

9.7 Accounting of Disclosures. Upon the Client's request, NurSelect shall provide to the Client an accounting of each Disclosure of PHI made by NurSelect or its employees, agents, representatives, or subcontractors. Any accounting provided by NurSelect under this Paragraph shall include:

- a. the date of the Disclosure;
- b. the name and address, if known, of the person or entity receiving the PHI;
- c. a brief description of the PHI disclosed; and
- d. a brief statement of the purpose of the Disclosure.

For each Disclosure that could require an accounting pursuant to this Paragraph, NurSelect shall document the information specified in (a) through (d) above, and shall retain securely such documentation for six (6) years from the date of such Disclosure.

9.8 Termination Upon Breach of this Article. Notwithstanding anything herein to the contrary, in the event of a breach of the provisions of this Article by NurSelect, the Client shall have the right to terminate this Agreement immediately and without penalty upon delivery of written notice to NurSelect. NurSelect's obligations under this Article shall survive the termination or expiration of this Agreement. Additionally, termination by the Client pursuant to this Section shall not relieve the Client of any obligation to pay any outstanding invoices, including those relating to work performed by NurSelect before its receipt of the Client's notice of termination hereunder.

9.9 Disposition of PHI. Upon termination of this Agreement, NurSelect shall either return or destroy, in accordance with any instructions by the Client, all PHI in the possession or control of NurSelect or its agents and subcontractors, with the exception of any information retained pursuant to the accounting of



Disclosures provisions of Section 9.7 herein. If such return or destruction of PHI is not feasible, NurSelect may retain PHI provided that NurSelect (a) continues to comply with the provisions of this Article for as long as it retains PHI, and (b) limits further Uses and Disclosures of PHI to those purposes that make the return or destruction of PHI infeasible.

9.10 Use of Subcontractors and Agents. NurSelect shall require each of its agents and subcontractors that receive PHI from NurSelect to execute a written agreement obligating the agent or subcontractor to comply with all the terms of this Article.

9.11 Relationship to Other Provisions. In the event that any provision of this Article is contrary to any provision elsewhere in this Agreement, the provisions of this Article shall control.

#### ARTICLE X - OTHER TERMS AND CONDITIONS

10.1 Cooperation. The parties hereto agree to provide reasonable cooperation to each other and to provide reasonable assistance to each other in connection with the investigation and resolution of any complaints, claims, actions or proceedings that may be brought by or against NurSelect Personnel in connection with this Agreement and the provision of Services hereunder.

10.2 Non-Discrimination. All Services provided under this Agreement shall be provided without regard to the race, religion, ancestry, color, creed, sex, age, disability, handicap status, payor source or national origin of the patient requiring such Services. NurSelect and NurSelect Personnel shall comply with all applicable laws prohibiting discrimination.

10.3 Elder Justice Act. By signing this Agreement, NurSelect acknowledges its receipt of the Notice for Covered Individuals of Reporting Obligations under the Elder Justice Act, which is incorporated herein by reference. NurSelect shall be responsible to provide such Notice to all NurSelect Personnel.

10.4 Modification. This Agreement evidences the entire Agreement between the parties hereto and, except as expressly provided herein, may not be changed, altered, or modified in any manner unless such change is agreed to in writing by both the Client and NurSelect.

10.5 Choice of Law. This Agreement has been executed and delivered in, and shall be interpreted, construed, and enforced pursuant to and in accordance with, the laws and in the courts of the Commonwealth of the Pennsylvania, without regard to its conflict of law's provisions.

10.6 Non-Waiver. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions herein.

10.7 Force Majeure. Neither party shall be held responsible for any delay or failure in performance under this Agreement arising out of causes beyond its control or without its fault or negligence. Such causes may include, but are not limited to, fires, strikes, acts of God, acts of terrorism or national disasters.

10.8 Severability. If any term or provision of this Agreement shall to any extent be deemed to be invalid or unenforceable, the remaining terms and provisions of the Agreement shall not be affected thereby, but each term and provision of the Agreement shall be valid and enforced to the fullest extent permitted by law.

10.9 Assignment. This Agreement is for the provision of personal, professional services and may not be assigned or transferred by either party without the prior written consent of the other.

10.10 Entire Agreement. This Agreement supersedes all previous contracts and constitutes the entire Agreement between the parties. Oral statements or prior written material not specifically incorporated herein shall be of no force and effect and no changes in or additions to this Agreement shall be recognized unless incorporated herein by amendment and executed by the parties hereto, such amendment(s) to be effective on the date stipulated therein.

10.11 Counterparts; Signature by Facsimile and E-mail Transmission. This Agreement and any amendment, restatement, or termination of any provision of this Agreement, may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto. A party's transmission by facsimile or by e-mail transmission of an Adobe Portable Document Format (also known as a PDF file) of a copy of this Agreement duly executed by that party shall constitute effective delivery by that party of an executed copy of this Agreement to the party receiving the transmission. A party that has delivered this Agreement by facsimile or e-mail transmission shall forthwith deliver an originally executed copy to the other party or parties.

10.12 Electronic Signatures. Any signature, whether it be electronic, digital or a .pdf copy of a manual signature, is intended to authenticate this Assignment and have the same effect as a manual or original signature.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and date first written above.

CLIENT:

By: David Rayha  
Name: DAVID G. RAYHA NHA  
Title: VP OPERATION/CDO

NURSELECT:

By: David E. Sherry  
Name: DAVID E. SHERY  
Title: PRESIDENT



# EXHIBIT 9



300 SUMMIT LAKE DRIVE, VALHALLA, NY 10595  
TEL: 914.494.7000 FAX: 914.494.7100 WWW.KBRLAW.COM

October 4, 2023

JOAN M. GILBRIDE  
DIRECT: 212.994.6517  
JGILBRIDE@KBRLAW.COM

BRIANA A. SEMENZA  
DIRECT: 914.449.1011  
BSEMENTA@KBRLAW.COM

VIA EMAIL ONLY

David Shelly  
NurSelect LLC  
1829 New Holland Road, Suite 13  
Reading, Pa 19607  
dshelly@nursesselectstaffing.com

Re:	Named Insured	:	NurSelect LLC
	Matter	:	<i>Estate of Geraldine E. Wiggins</i>
	Policy No.	:	LHC801468 (March 1, 2023 to March 1, 2024)
	RSUI File No.	:	7030187058
	KBR File No.	:	810.750

---

Dear Mr. Shelly:

This firm has been retained to advise and assist RSUI Indemnity Company ("RSUI"), which is the authorized representative on behalf of Landmark American Insurance Company ("Landmark"). Landmark issued the above referenced Professional Liability Policy to NurSelect LLC ("NurSelect").

We are directing this letter to your attention as the representative of all Insureds under the captioned Policy with respect to insurance coverage matters. If you are not acting on behalf of the Insureds, please direct a copy of this letter to the appropriate party and advise us immediately of that party's identity. Please direct all future communications intended for Landmark with respect to coverage for these matters to the undersigned.

Landmark further acknowledges receipt of the above referenced third party complaint filed on June 13, 2023, in the Pennsylvania Court of Common Pleas, Lancaster County. The purpose of this letter is to explain the operation of the captioned policy in connection with this matter. As detailed below, and based on the information currently available to it, Landmark has determined that coverage is not available. The basis for Landmark's conclusion is detailed in this letter. To the extent the Insureds have additional information Landmark should consider, Landmark is willing to reevaluate its coverage determination.

NurSelect LLC  
Page 2

Please be aware that nothing in this letter is intended to waive any rights Landmark may have under the Landmark Policy, at law or in equity, all of which are expressly reserved. If you have any questions about anything in this letter, we would be more than happy to respond to those questions to the best of our ability.

### THE SUBMITTED MATTER

On January 12, 2023, counsel to Brethren Village Retirement Community sent a letter to NurSelect, LLC (via email and mail), advising that Brethren Village has been sued in the Court of Common Pleas related to the care and treatment of one of its residents, Geraldine Wiggins (the "Attorney Letter"). The Attorney Letter advises that Brethren Village is being sued for negligence arising out of a fall sustained by Ms. Wiggins on May 12, 2021, and that Brethren Village's investigation revealed that Ayanna McDowell, CNA, who was employed by NurSelect at the relevant time, had direct involvement in Ms. Wiggins' alleged fall. The Attorney Letter discusses the "Staffing Agreement" between Brethren Village and NurSelect, with specific reference to the agreement provision for "Apportionment of Liability and Damages Indemnification," which states:

5.1 Apportionment of Liability. It is hereby stipulated and agreed between the [Brethren Village] and NurSelect that with respect to any claim or action arising out of the Services, each entity shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements or judgments resulting from negligence, actions or omissions of its own agents, officers, and employees.

The Attorney Letter advises that based upon the foregoing provision, Brethren Village will be filing a joinder complaint against NurSelect to invoke NurSelect's contractual agreement to indemnify Brethren Village for the alleged negligence, actions, or omissions of Ms. McDowell related to the care and treatment of Ms. Wiggins. The Attorney Letter also advises NurSelect to provide notice of the pending joinder against NurSelect to its liability insurance provider so that counsel can be assigned to represent NurSelect's interests.

It is Landmark's understanding that NurSelect received the Attorney Letter via email on January 12, 2023.

On June 13, 2023, a joinder complaint was filed against NurSelect in the Pennsylvania Court of Common Pleas in Lancaster County, captioned *Brenda L. King, individually and as Administratrix of the Estate of Geraldine E. Wiggins, v. Rehabilitation Center at Brethren Village, LLC, Brethren Village, Brethren Village Realty, LLC, Lori Schoener, NHA, and John Does 1-4 v. NurSelect, LLC*, Case No. CI-22-04128 (the "Joinder Complaint").<sup>1</sup> The Joinder Complaint alleges the following three causes of action: (1) negligence, indemnification and contribution; (2) vicarious liability, indemnification, and contribution; and (3) contractual indemnification. The Joinder Complaint alleges that NurSelect is liable for common law and contractual indemnification and/or contribution, vicariously liable to Ms. Wiggins' estate, jointly and severally liable with Brethren Village, and liable over Brethren Village for claims asserted by Ms. Wiggins' estate and for injuries and damages alleged in originating complaint. The Joinder complaint also asserts that pursuant to the supplemental staffing agreement, NurSelect is contractually

<sup>1</sup> The fourth amended complaint (pre-joinder) alleges that Decedent Wiggins died on August 28, 2021, and that defendant Brethren Village acted negligently through its agents in the care and treatment of Ms. Wiggins beginning on April 13, 2021. On May 12, 2021, Ms. Wiggins was left alone despite the plan of care requiring assistance and records, and obtained a head injury when she fell, which allegedly led to her death.

NurSelect LLC  
Page 3

obligated to indemnify and hold harmless Brethren Village for any liabilities, damages, and expenses resulting from the claims asserted by Ms. Wiggins' Estate.

It is Landmark's understanding that NurSelect was served with the Joinder Complaint and reported the Joinder Complaint to Landmark on September 12, 2023.

### THE POLICY

Landmark issued its Professional Liability Policy No. LHC801468 to NurSelect LLC reflecting a Policy Period of March 1, 2023 to March 1, 2024 (the "Policy"). The Policy's General Liability Coverage Part is subject to a \$1 million Limit of Liability per Claim and \$3 million in the aggregate. The Policy's Commercial General Liability Coverage Part is subject to a \$1 million Limit of Liability per Occurrence and \$3 million in the aggregate.

Pursuant to the Cross Coverage Exclusion Endorsement, the Policy only affords coverage under either the General Liability Coverage part or the Professional Liability Coverage part, not both.

### COVERAGE DETERMINATION

#### *Medical Professional Liability Coverage*

Part 1 of the Medical Professional Liability Coverage part provides the following:

The Company will pay on behalf of the Insured, as shown in the Declarations, all sums that the Insured becomes legally obligated to pay as **Damages** and associated **Claim Expenses** arising out of a negligent act, error or omission, even if the **Claim** asserted is groundless, false or fraudulent, in the rendering of or failure to render professional services as described in the Business Description on the Declarations, provided that the:

1. **Claim** is first made against the Insured during the **Policy Period**, and reported to the Company no later than sixty (60) days after the end of the **Policy Period**;
2. Negligent act, error or omission took place in a covered territory;
3. Negligent act, error or omission took place after the **Retroactive Date** as shown in the Declarations.

Section III.C. of Medical Professional Liability Coverage part defines Claim to include a "Claim means a written demand for monetary or non-monetary relief received by the Insured during the Policy Period, including the service of suit, or the institution of an arbitration proceeding." The Attorney Letter qualifies as a Claim since the Attorney Letter states that Brethren Village intends to name the insured as a defendant in the suit, are seeking contractual indemnity (relief) and request NurSelect notify its insurance carrier. It is Landmark's understanding and Mr. Shelly has acknowledged that he received the Attorney Letter on January 12, 2023, via email, but he did not open the email. The Medical Professional Liability Coverage part requires that Claims be first made against the Insured during the March 1, 2023 to March 1, 2024 Policy Period. The Attorney Letter is a Claim made against the Insured that was first made on January 12, 2023, 48 days before the inception of the Policy Period, as it was received by the Insured on January 12, 2023.

Pursuant to Section C. of the Medical Professional Liability Coverage part, all "Claims arising out of a single negligent act, error or omission, or a series of related negligent acts, errors or omissions by one or more Insureds shall be treated as a single Claim for all purposes of this



NurSelect LLC  
Page 4

policy.” Section C also provides that all “Claims shall be deemed first made when the earliest of such Claims is first made, regardless of whether such date is before or during the Policy Period.” The Joinder Complaint and the Attorney letter arise out of the same exact facts and allegations – the contractual indemnification and vicarious liability of NurSelect arising out of Ms. Wiggins’ fall at Brethren Village. Accordingly, the Joinder Complaint and the Attorney Letter are a single Claim first made on January 12, 2023.<sup>2</sup> As such, coverage for the Submitted Matter is denied as a Claim first made prior to the inception of the Policy Period, failing to trigger the applicable Insuring Agreement.

The Professional Liability Coverage excludes coverage for any Claim or Claim Expenses based upon or arising out of:

Any obligation or liability assumed by the Insured under any contract or any oral or written agreement, unless liability would have attached in the absence of such a contract or agreement, including the Insured’s decision to unilaterally terminate or otherwise alter, remove or abridge any rights, benefits or obligations under any contract or agreement.

This exclusion also acts to wholly exclude coverage for the Submitted Matter based on the contract NurSelect has with Brethren Village.

Moreover, the Professional Liability Coverage part includes a Notice of Claim general condition that provides:

The Insured must notify the Company as soon as practicable of an incident, occurrence or offense that may reasonably be expected to result in a **Claim**. Where notice to the Company of such incidents, occurrences or offenses has been acknowledged as adequate by the Company in writing, subsequent **Claims** derived from such incidents, occurrences or offenses will be deemed as first made at the time the incident, occurrence or offense giving rise to such **Claim** was first provided. The Insured also must immediately send copies to the Company of any demands, notices, summonses or legal papers received in connection with any **Claim**, and must authorize the Company to obtain records and other information.

It is Landmark’s understanding that NurSelect was aware of the incident involving Ms. Wiggins as early as October 14, 2022, when Brethren Village’s counsel requested Ayanna McDowell’s contact information and requested Ms. McDowell’s statement regarding the incident. NurSelect failed to notify Landmark as soon as practicable of the incident (in October 2022), and failed to immediately send a copy of the January 12, 2023 Attorney Letter to Landmark. As such, NurSelect failed to fulfill the foregoing condition of the Policy, resulting in another basis for a denial of coverage for the Submitted Matter.

#### *Commercial General Liability Coverage*

The General Liability Coverage A Insuring Agreement provides:

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured

<sup>2</sup> The Attorney Letter and the Joinder Complaint will collectively be referred to herein as the “Submitted Matter”.

NurSelect LLC  
Page 5

against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle or defend any "claim" or "suit" that may result. But:

1. The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
2. Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

Section 2. of the Commercial General Liability coverage part provides the following, in relevant part:

This Insurance does not apply to:

\* \* \*

**v. Prior Knowledge**

Any alleged act, error, omission, or circumstance likely to give rise to a "claim" that an Insured had knowledge of prior to the effective date of this policy. This exclusion includes, but is not limited to any prior "claim" or possible "claim" referenced in the Insured's application.

Based on NurSelect's own admission, NurSelect was aware on October 14, 2022, of the "Occurrence" that occurred with Ms. Wiggins as it involved Ayanna McDowell (NurSelect's employee) because Ayanna McDowell's statement was requested, so NurSelect had prior knowledge of the incident and this possible claim. NurSelect also had prior knowledge of a "claim" when it received the January 12, 2023 Attorney Letter. Accordingly, coverage is wholly excluded under the Commercial General Liability part of the Policy based on the prior knowledge exclusion.

Section IV.2. of the Commercial General Liability conditions provides that in the event of occurrence, offense, claim or suit, the insured:

- a. [ ] must see to it that we are notified as soon as practicable of an "occurrence" or offense which may result in a "claim". To the extent possible, notice should include:
  1. How, when and where the "occurrence" or offense took place;
  2. The names and addresses of any injured persons and witnesses; and
  3. The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a "claim" is made or "suit" is brought against any insured, you must:
  1. Immediately record the specifics of the "claim" or "suit" and the date received; and
  2. Notify us as soon as practicable.

You must see to it that we receive written notice of the "claim" or "suit" as soon as practicable.
- c. You and any other involved insured must:
  1. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim" or a "suit";.....

NurSelect failed to comply with its duties under Section IV.2. of the Commercial General Liability part of the Policy when it failed to immediately send Landmark a copy of the January 12, 2023 Attorney Letter, which provided notice of a "claim". It also appears that NurSelect should have advised Landmark of the occurrence, when it first learned of it on October 14, 2022. As such, coverage is denied under the Commercial General Liability Coverage part of the Policy.

NurSelect LLC  
Page 6

Section 2.b. of the Commercial General Liability Coverage part exclusions provides the following:

This Insurance does not apply to:

\* \* \*

**b. Contractual Liability**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- a. That the insured would have in the absence of the contract or agreement; or
- b. Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - a. Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - b. Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

Landmark reserves its rights to further exclude coverage based on the contractual indemnity exclusion in light of the "Staffing Agreement" entered into between NurSelect and Brethren Village.

Landmark also notes that NurSelect signed a Policy application on January 26, 2023, and checked no in response to the following question: "In the past twelve (12) months, has any professional liability claim or suit been made against the Applicant or any of its predecessor firms?". The application contains the following representations clause:

The Applicant declares that the above statement and representations are true and correct, and that no facts have been suppressed or misstated. All written statements and materials furnished to the Company, in conjunction with this application will be incorporated by reference into this application and made part hereof...is agreed that this form shall be the basis of the contract should a policy be issued, and it will be attached to and made part of the policy.

At the time NurSelect signed the application on January 26, 2023, NurSelect knew about the Ms. Wiggins' incident and received the January 12, 2023 letter. Accordingly, it appears the application may have contained a misrepresentation. Landmark expressly reserves its rights in this regard.

**CONCLUSION**

In conclusion, the Policy does not afford coverage for the captioned matter. Landmark remains willing to reconsider its denial of coverage for this matter if warranted by additional information provided by the Insured. If nothing further is received by Landmark from the Insured in the next thirty days, Landmark will presume the Insured accept this coverage determination and Landmark will close its file.

NurSelect LLC  
Page 7

This letter is not intended to be an exhaustive recitation of all potentially applicable terms, conditions, exclusions or endorsements of the Policy. Nothing in this letter is intended to, or does, waive any of Landmark's rights, privileges or defenses under the Policy, at law or in equity, all of which are expressly reserved. Landmark expressly reserves the right to alter, supplement, and modify this coverage statement as other and additional information may become available. Landmark's coverage determination is necessarily based upon information that has been made available to it at this point. If you have any other information that Landmark should consider, please let us know.

If you have any questions, please feel free to contact us.

Very truly yours,

KAUFMAN BORGEEEST & RYAN LLP



Joan Gilbride  
Briana Semenza

cc: (via email only)

zwilson@rsui.com

KAUFMAN BORGEEEST & RYAN LLP



# EXHIBIT 10



300 SUMMIT LAKE DRIVE, VALHALLA, NY 10595  
TEL: 914.494.7000 FAX: 914.494.7100 WWW.KBRLAW.COM

April 12, 2024

JOAN M. GILBRIDE  
DIRECT: 2125.994.6517  
JGILBRIDE@KBRLAW.COM

BRIANA A. SEMENZA  
DIRECT: 914.449.1011  
BSEMENTA@KBRLAW.COM

VIA EMAIL ONLY

J. David Ziegler  
Dickie, McCamey, Chilcote, P.C.  
Two PPG Place, Suite 400  
Pittsburgh, PA 15222-540  
dziejler@dmclaw.com

Re:	Named Insured	:	NurSelect LLC
	Matter	:	<i>Estate of Geraldine E. Wiggins</i>
	Policy No.	:	LHC801468 (March 1, 2023 to March 1, 2024)
	RSUI File No.	:	7030187058
	KBR File No.	:	810.750

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Dear Mr. Ziegler:

As you know, this firm has been retained to advise and assist RSUI Indemnity Company ("RSUI"), which is the authorized representative on behalf of Landmark American Insurance Company ("Landmark"). Landmark issued the above referenced Professional Liability Policy to NurSelect LLC (the "Insured" or "NurSelect").<sup>1</sup>

Landmark acknowledges receipt of your April 4 and April 5, 2024 email communications, requesting Landmark provide NurSelect with a defense for the above captioned matter, and your prior letters contesting Landmark's coverage denial of the above captioned matter. As detailed below, Landmark has agreed to provide NurSelect with a defense for the above captioned matter, subject to the reservations of rights set forth below and pending the outcome of the declaratory judgment action pending in the U.S. District Court for the Eastern District of Pennsylvania, captioned: *Landmark American Insurance Company v. NurSelect LLC*, Case No. 5:24-cv-01412 (the "DJ Action"). Please allow this letter to supplant Landmark's prior coverage letter dated October 4, 2023, and Landmark's additional communications set forth in its October 17, 2023 and February 16, 2024 letters.

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<sup>1</sup> Capitalized terms, not otherwise defined herein are intended to retain the definition found in the Landmark policy defined below.

NurSelect LLC  
Page 2

### THE SUBMITTED MATTER

On January 12, 2023, counsel to Brethren Village Retirement Community sent a letter to NurSelect, LLC (via email and mail), advising that Brethren Village has been sued in the Court of Common Pleas related to the care and treatment of one of its residents, Geraldine Wiggins (the “Attorney Letter”). The Attorney Letter advises that Brethren Village is being sued for negligence arising out of a fall sustained by Ms. Wiggins on May 12, 2021, and that Brethren Village’s investigation revealed that Ayanna McDowell, CNA, who was employed by NurSelect at the relevant time, had direct involvement in Ms. Wiggins’ alleged fall. The Attorney Letter discusses the “Staffing Agreement” between Brethren Village and NurSelect, with specific reference to the agreement provision for “Apportionment of Liability and Damages Indemnification,” which states:

5.1 Apportionment of Liability. It is hereby stipulated and agreed between the [Brethren Village] and NurSelect that with respect to any claim or action arising out of the Services, each entity shall only be liable for payment of that portion of any and all liability, costs, expenses, demands, settlements or judgments resulting from negligence, actions or omissions of its own agents, officers, and employees.

The Attorney Letter advises that based upon the foregoing provision, Brethren Village will be filing a joinder complaint against NurSelect to invoke NurSelect’s contractual agreement to indemnify Brethren Village for the alleged negligence, actions, or omissions of Ms. McDowell related to the care and treatment of Ms. Wiggins. The Attorney Letter also advises NurSelect to provide notice of the pending joinder against NurSelect to its liability insurance provider so that counsel can be assigned to represent NurSelect’s interests. It is Landmark’s understanding that NurSelect received the Attorney Letter via email on January 12, 2023.

On June 13, 2023, a joinder complaint was filed against NurSelect in the Pennsylvania Court of Common Pleas in Lancaster County, captioned *Brenda L. King, individually and as Administratrix of the Estate of Geraldine E. Wiggins, v. Rehabilitation Center at Brethren Village, LLC, Brethren Village, Brethren Village Realty, LLC, Lori Schoener, NHA, and John Does 1-4 v. NurSelect, LLC*, Case No. CI-22-04128 (the “Joinder Complaint”).<sup>2</sup> The Joinder Complaint alleges the following three causes of action: (1) negligence, indemnification and contribution; (2) vicarious liability, indemnification, and contribution; and (3) contractual indemnification. The Joinder Complaint alleges that NurSelect is liable for common law and contractual indemnification and/or contribution, vicariously liable to Ms. Wiggins’ estate, jointly and severally liable with Brethren Village, and liable over Brethren Village for claims asserted by Ms. Wiggins’ estate and for injuries and damages alleged in originating complaint. The Joinder complaint also asserts that pursuant to the supplemental staffing agreement, NurSelect is contractually obligated to indemnify and hold harmless Brethren Village for any liabilities, damages, and expenses resulting from the claims asserted by Ms. Wiggins’ Estate.

It is Landmark’s understanding that NurSelect was served with the Joinder Complaint and reported the Joinder Complaint to Landmark on September 12, 2023.

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<sup>2</sup> The fourth amended complaint (pre-joinder) alleges that Decedent Wiggins died on August 28, 2021, and that defendant Brethren Village acted negligently through its agents in the care and treatment of Ms. Wiggins beginning on April 13, 2021. On May 12, 2021, Ms. Wiggins was left alone despite the plan of care requiring assistance and records, and obtained a head injury when she fell, which allegedly led to her death.

NurSelect LLC  
Page 3

## THE POLICY

Landmark issued its Professional Liability Policy No. LHC801468 to NurSelect LLC reflecting a Policy Period of March 1, 2023 to March 1, 2024 (the "Policy"). The Policy's General Liability Coverage Part is subject to a \$1 million Limit of Liability per Claim and \$3 million in the aggregate. The Policy's Commercial General Liability Coverage Part is subject to a \$1 million Limit of Liability per Occurrence and \$3 million in the aggregate.

Pursuant to the Cross Coverage Exclusion Endorsement, the Policy only affords coverage under either the General Liability Coverage Part or the Professional Liability Coverage Part, not both.

## COVERAGE DETERMINATION

### *Medical Professional Liability Coverage*

Part 1 of the Medical Professional Liability Coverage Part provides the following:

The Company will pay on behalf of the Insured, as shown in the Declarations, all sums that the Insured becomes legally obligated to pay as **Damages** and associated **Claim Expenses** arising out of a negligent act, error or omission, even if the **Claim** asserted is groundless, false or fraudulent, in the rendering of or failure to render professional services as described in the Business Description on the Declarations, provided that the:

1. **Claim** is first made against the Insured during the **Policy Period**, and reported to the Company no later than sixty (60) days after the end of the **Policy Period**;
2. Negligent act, error or omission took place in a covered territory;
3. Negligent act, error or omission took place after the **Retroactive Date** as shown in the Declarations.

The Joinder Complaint is a Claim first made against the Insured – NurSelect. Landmark has agreed to provide a defense to NurSelect for the Joinder Complaint subject to the outcome of the pending DJ Action and a full reservation of rights under the Policy.

Pursuant to Section I.B of the Medical Professional Liability Coverage Part of the Policy (Defense and Settlement), Landmark has the right and duty to defend any Claim against an Insured and to select legal counsel for the defense of a Claim. Based on a review of the docket, it is Landmark's understanding that Kevin Conrad of Dickie, McCamey & Chilcote, P.C. was defending NurSelect. Please be advised that Landmark has reassigned this matter to Christian Scheuerman of Marks, O'Neill, O'Brien, Doherty & Kelly, P.C. Landmark reserves all of its rights in connection with Section I.B. of the Medical Professional Liability Coverage Part of the Policy.

Notwithstanding the foregoing, and in light of the pending DJ Action, Landmark continues to expressly reserve its rights in connection with the satisfaction of the Medical Professional Liability Coverage Part Insuring Agreement. Section III.C. of Medical Professional Liability Coverage Part defines Claim to include a "Claim means a written demand for monetary or non-monetary relief received by the Insured during the Policy Period, including the service of suit, or the institution of an arbitration proceeding." The Attorney Letter qualifies as a Claim since the Attorney Letter states that Brethren Village intends to name the insured as a defendant in the suit, are seeking contractual indemnity (relief) and request NurSelect notify its insurance carrier. It is Landmark's understanding and Mr. Shelly has acknowledged that he received the Attorney Letter on January 12, 2023, via email, but he did not open the email. The Medical Professional Liability Coverage Part requires that Claims be first made against the Insured during the March 1, 2023 to March 1,



NurSelect LLC  
Page 4

2024 Policy Period. The Attorney Letter is a Claim made against the Insured that was first made on January 12, 2023, 48 days before the inception of the Policy Period, as it was received by the Insured on January 12, 2023. Pursuant to Section C. of the Medical Professional Liability Coverage Part, all “Claims arising out of a single negligent act, error or omission, or a series of related negligent acts, errors or omissions by one or more Insureds shall be treated as a single Claim for all purposes of this policy.” Section C also provides that all “Claims shall be deemed first made when the earliest of such Claims is first made, regardless of whether such date is before or during the Policy Period.” The Joinder Complaint and the Attorney letter arise out of the same exact facts and allegations – the contractual indemnification and vicarious liability of NurSelect arising out of Ms. Wiggins’ fall at Brethren Village. Accordingly, the Joinder Complaint and the Attorney Letter are a single Claim first made on January 12, 2023 – prior to the inception of the Policy Period, failing to trigger the applicable Insuring Agreement.

While Landmark has withdrawn its denial of coverage based on the failure to trigger the Medical Professional Liability Insuring Agreement in light of the pending DJ Action, Landmark continues to reserve its rights in connection with the satisfaction of the Insuring Agreement and Section C.

Landmark also reserves its rights in connection with the contract exclusion and the Policy’s Notice of Claim general condition. The Medical Professional Liability Coverage Part excludes coverage for any Claim or Claim Expenses based upon or arising out of:

Any obligation or liability assumed by the Insured under any contract or any oral or written agreement, unless liability would have attached in the absence of such a contract or agreement, including the Insured’s decision to unilaterally terminate or otherwise alter, remove or abridge any rights, benefits or obligations under any contract or agreement.

This Joinder Complaint (and the Attorney Letter) asserts that NurSelect and Brethren Village are parties to a written contract – the “Staffing Agreement”. While Landmark has withdrawn its denial of coverage based on the foregoing provision in light of the pending DJ Action, Landmark continues to reserve its rights in connection with the contract exclusion.

Moreover, the Medical Professional Liability Coverage Part includes a Notice of Claim general condition that provides:

The Insured must notify the Company as soon as practicable of an incident, occurrence or offense that may reasonably be expected to result in a **Claim**. Where notice to the Company of such incidents, occurrences or offenses has been acknowledged as adequate by the Company in writing, subsequent **Claims** derived from such incidents, occurrences or offenses will be deemed as first made at the time the incident, occurrence or offense giving rise to such **Claim** was first provided. The Insured also must immediately send copies to the Company of any demands, notices, summonses or legal papers received in connection with any **Claim**, and must authorize the Company to obtain records and other information.

It is Landmark’s understanding that NurSelect was aware of the incident involving Ms. Wiggins as early as October 14, 2022, when Brethren Village’s counsel requested Ayanna McDowell’s contact information and requested Ms. McDowell’s statement regarding the incident, and thus, it appears that NurSelect failed to notify Landmark as soon as practicable of the incident (in October 2022). NurSelect also failed to immediately send a copy of the January 12, 2023 Attorney Letter to Landmark. As such, Landmark reserves its rights to deny coverage based on NurSelect’s failure to fulfill the foregoing condition of the Policy, pending the outcome of the DJ Action.

NurSelect LLC  
Page 5

Landmark notes that pursuant to Section IV.H. of the Professional Liability Coverage Part, the Policy applies as excess over, and will not contribute with, any other existing insurance, unless such other insurance is specifically written to be excess of the Policy.

### *Commercial General Liability Coverage*

Coverage continues to be denied under the Policy's Commercial General Liability Coverage Part.

The General Liability Coverage A Insuring Agreement provides:

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle or defend any "claim" or "suit" that may result. But:
  1. The amount we will pay for damages is limited as described in Section III – Limits of Insurance; and
  2. Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

The Insuring Agreement requires the "bodily injury" or "property damage" to have occurred during the March 1, 2023 to March 1, 2024 policy period. It is undisputed that the alleged bodily injury took place on May 12, 2021. Accordingly, the submitted matter fails to trigger the applicable Insuring Agreement under the Commercial General Liability Coverage Part.

The Commercial General Liability Coverage Part Insuring Agreement also requires, as a condition to coverage, that no Insured knew that the alleged "bodily injury" had occurred prior to the Policy inception on March 1, 2023. NurSelect knew about Ms. Wiggins' alleged incident and injury as early as October 2022. Accordingly, coverage is further denied under the Commercial General Liability Coverage Insuring Agreement based on the Insured's failure to satisfy the conditions precedent to coverage.

Landmark reserves its rights to further deny coverage under the Policy's Commercial General Liability Coverage Part based on: (1) the prior knowledge exclusion<sup>3</sup> because the Insured appears to have had knowledge prior to the inception of the Policy (on March 1, 2023) of an alleged act, error, omission, or circumstance likely to give rise to a "claim" as early as October 2022, when the Insured discovered that its employee was involved in Ms. Wiggins' incident; (2) the notice

<sup>3</sup> Section 2. of the Commercial General Liability Coverage Part provides the following, in relevant part:

This Insurance does not apply to: . . .

#### **v. Prior Knowledge**

Any alleged act, error, omission, or circumstance likely to give rise to a "claim" that an Insured had knowledge of prior to the effective date of this policy. This exclusion includes, but is not limited to any prior "claim" or possible "claim" referenced in the Insured's application.

NurSelect LLC  
Page 6

condition under the Policy set forth in Section IV.2,<sup>4</sup> which requires that NurSelect immediately send Landmark a copy of the January 12, 2023 Attorney Letter, which provided notice of a “claim”; (3) the contractual liability exclusion<sup>5</sup> in light of the “Staffing Agreement” entered into between NurSelect and Brethren Village.

Landmark also notes that NurSelect signed a Policy application on January 26, 2023, and checked no in response to the following question: “In the past twelve (12) months, has any professional liability claim or suit been made against the Applicant or any of its predecessor firms?”. The application contains the following representations clause:

The Applicant declares that the above statement and representations are true and correct, and that no facts have been suppressed or misstated. All written statements and materials furnished to the Company, in conjunction with this application will be incorporated by reference into this application and made part hereof...is agreed that this form shall be the basis of the contract should a policy be issued, and it will be attached to and made part of the policy.

At the time NurSelect signed the application on January 26, 2023, NurSelect knew about the Ms. Wiggins’ incident and received the January 12, 2023 letter. Accordingly, it appears the application may have contained a misrepresentation. Landmark expressly reserves its rights in this regard.

<sup>4</sup> Section IV.2. of the Commercial General Liability conditions provides that in the event of occurrence, offense, claim or suit, the insured:

- a. [ ] must see to it that we are notified as soon as practicable of an “occurrence” or offense which may result in a “claim”. To the extent possible, notice should include:
  1. How, when and where the “occurrence” or offense took place;
  2. The names and addresses of any injured persons and witnesses; and
  3. The nature and location of any injury or damage arising out of the “occurrence” or offense.
- b. If a “claim” is made or “suit” is brought against any insured, you must:
  1. Immediately record the specifics of the “claim” or “suit” and the date received; and
  2. Notify us as soon as practicable.

You must see to it that we receive written notice of the “claim” or “suit” as soon as practicable.
- c. You and any other involved insured must:
  1. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the “claim” or a “suit”;.....

<sup>5</sup> Section 2.b. of the Commercial General Liability Coverage Part exclusions provides the following:

This Insurance does not apply to: ...

**b. Contractual Liability**

“Bodily injury” or “property damage” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- a. That the insured would have in the absence of the contract or agreement; or
- b. Assumed in a contract or agreement that is an “insured contract”, provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an “insured contract”, reasonable attorneys’ fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of “bodily injury” or “property damage”, provided:
  - a. Liability to such party for, or for the cost of, that party’s defense has also been assumed in the same “insured contract”; and
  - b. Such attorneys’ fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

NurSelect LLC  
Page 7

CONCLUSION

In conclusion, subject to certain reservations of rights and the outcome of the DJ Action, Landmark has agreed to provide a defense under the Policy for the captioned matter. This letter is not intended to be an exhaustive recitation of all potentially applicable terms, conditions, exclusions or endorsements of the Policy. Nothing in this letter is intended to, or does, waive any of Landmark's rights, privileges or defenses under Policy, at law or in equity, all of which are expressly reserved. Landmark expressly reserves the right to alter, supplement, and modify this coverage statement as other and additional information may become available. Landmark's coverage determination is necessarily based upon information that has been made available to it at this point. If you have any other information that Landmark should consider, please let us know.

If you have any questions, please feel free to contact us.

Very truly yours,

KAUFMAN BORGEEEST & RYAN LLP



Joan Gilbride  
Briana Semenza

cc: (via email only)

zwilson@rsui.com

KAUFMAN BORGEEEST & RYAN LLP

10093070



# EXHIBIT 11

**From:** Linda Reidenbaugh <[LLR@saxtonstump.com](mailto:LLR@saxtonstump.com)>

**Sent:** Thursday, January 12, 2023 4:12:49 PM

**To:** David Shelly <[dshelly@nurselectstaffing.com](mailto:dshelly@nurselectstaffing.com)>

**Cc:** [jsnader@bv.org](mailto:jsnader@bv.org) <[jsnader@bv.org](mailto:jsnader@bv.org)>; Kimberly A. Selemba <[kas@saxtonstump.com](mailto:kas@saxtonstump.com)>

**Subject:** Brenda L. Kling, Individually and as Administratrix of the Estate of Geraldine E. Wiggins v. Rehabilitation Center at Brethren Village, et al.

Hello Mr. Shelly,

On behalf of Kimberly A. Selemba, please find a copy of the attached correspondence.

Thank you.

Linda Reidenbaugh | Paralegal/Client Services Professional

**SAXTON & STUMP**  
LAWYERS AND CONSULTANTS

280 Granite Run Drive, Suite 300

Lancaster, PA 17601

Phone: 717.556.1038 | Internal: 1038

[llr@saxtonstump.com](mailto:llr@saxtonstump.com)

# EXHIBIT 12

# SAXTON & STUMP

LAWYERS AND CONSULTANTS

4250 Crums Mill Road, Suite 201 • Harrisburg, PA 17112  
P: (717) 216-5505 • F: (717) 547-1900

**Direct Dial:** (717) 941-1214

**Email:** [kas@saxtonstump.com](mailto:kas@saxtonstump.com)

January 12, 2023

**VIA EMAIL** ([dshelly@nurselectstaffing.com](mailto:dshelly@nurselectstaffing.com))

David Shelly, President  
NurSelect, LLC  
640 Freedom Business Center Dr.  
Third Floor  
King of Prussia, PA 19406

**Re: Brenda L. Kling, Individually and as Administratrix of the Estate of Geraldine E. Wiggins v. Rehabilitation Center at Brethren Village, et al.  
Case No. CI-22-04128, Lancaster County Court of Common Pleas  
Joinder of NurSelect, LLC**

Dear Mr. Shelly:

As you know from our prior communications, this law firm represents Brethren Village Retirement Community. A lawsuit has been commenced against Brethren Village in the Court of Common Pleas of Lancaster County related to the care and treatment of one of its residents, Geraldine Wiggins. Specifically, the lawsuit alleges negligence arising out of a fall sustained by Ms. Wiggins on May 12, 2021. Our investigation has revealed that Ayanna McDowell, CNA, who was employed by NurSelect, LLC at the relevant time, had direct involvement in this alleged fall. Upon confirming that Ayanna McDowell, CNA was an employee of NurSelect and reviewing the contractual agreement between NurSelect and Brethren Village, our office did not meet with Ms. McDowell.

You are aware that Brethren Village is a party to a Staffing Agreement with NurSelect for the provision of NurSelect Personnel on contractual assignments on a per-diem or temporary basis at Brethren Village. The Staffing Agreement contains a provision for Apportionment of Liability and Damages Indemnification. Specifically, Section 5.1 of the Staffing Agreement states:

5.1 Apportionment of Liability. It is hereby stipulated and agreed between the Client and NurSelect that with respect to any claim or action arising out of the Services, each entity shall only be liable for payment of that portion of any and all liability, costs,



January 12, 2023

Saxton & Stump

Page 2 of 2

expenses, demands, settlements or judgments resulting from negligence, actions or omissions of its own agents, officers, and employees.

Based upon this provision, Brethren Village will be filing a joinder complaint against NurSelect to invoke NurSelect's contractual agreement to indemnify Brethren Village for the alleged negligence, actions, or omissions of Ms. McDowell related the care and treatment of Ms. Wiggins. Please provide notice of this pending joinder against NurSelect to your liability insurance provider so that counsel can be assigned to represent NurSelect's interests.

Thank you for your attention to this matter.

Sincerely,

SAXTON & STUMP

*/s/ Kimberly A. Selemba*  
Kimberly A. Selemba, Esquire  
Senior Counsel

cc: John N. Snader, President/CEO, Brethren Village (via email)

# EXHIBIT 13

## Sara Moriarty

---

**From:** Joan M. Gilbride  
**Sent:** Thursday, October 5, 2023 2:20 PM  
**To:** Briana A. Semenza  
**Subject:** FW: Wiggins v. NurSelect, RSUI Claim No. 7030187058  
**Attachments:** 9402374\_1.pdf

**Importance:** High

---

**From:** Anthony Viola <anthonyviola@libertyins.com>  
**Sent:** Thursday, October 5, 2023 2:02 PM  
**To:** Joan M. Gilbride <jgilbride@kbrlaw.com>; Wilson, Zach <zwilson@rsui.com>  
**Cc:** David Shelly <dshelly@nurselectstaffing.com>; Steve Pcsolar <stevepcsolar@libertyins.com>; Jason Rigby <jasonrigby@libertyins.com>  
**Subject:** FW: Wiggins v. NurSelect, RSUI Claim No. 7030187058  
**Importance:** High

Ms. Gilbride,

We are the agent/broker for NurSelect LLC. We are in receipt of your coverage declination letter attached above. We strongly disagree with your coverage position and would like to take this opportunity to accurately reflect the facts and timeline of events.

The letter above indicates NurSelect and Mr. David Shelly was aware of this incident involving Mr. Wiggins as early as October 14, 2022. Brethren Village counsel requested Ayana McDowell's contact information and statement regarding an incident involving Ms. Geraldine Wiggins that occurred on May 12, 2021. The insured was aware of an incident but, did not believe "fingers were being pointed" at the insured or its employee Ayanna McDowell as being responsible for the incident. Moreover, there was no indication Ms. Wiggins and/or her family were bringing forth a personal injury claim. The request for Ms. McDowell contact information and statement was 17 months after the incident. Mr. Shelly believed Brethren simply wanted Ms. McDowell statement on record in the event a claim was brought forth by Ms. Wiggins. The insured was not aware of any other information that obligate them to play insurance on notice of a claim. It should be further noted, there is a 2-way indemnification provision within the contract between NurSelect & Brethren. Said contract suggests Brethren agrees to defend and indemnify NurSelect from claims arising out of the care, services of residents or lack thereof. Considering Ms. McDowell was at the control and direction of Brethren coupled with the favorable contract language the insured had no reason to believe a claim was being brought forth against NurSelect.

The letter also indicates the insured received an email and **letter** dated January 12, 2023, from Brethren Village advising Brethren had been sued in the Court of Common Pleas in relation to an incident involving Mr. Geraldine Wiggins. The letter further advises that Brethren intends to file a joinder complaint against NurSelect to invoke NurSelect contractual obligation pursuant to a staffing contract. Let the record reflect accurately, NurSelect never received a letter via US mail or Certified Mail from Brethren Village Retirement Community or its counsel. The only correspondence the insured (Mr. David Shelly) received was an email dated January 12, 2023. The email was sent by Ms. Linda Reidenbaugh paralegal with Saxton & Stump Attorneys at Law. Not recognizing the sender and/or email address, Mr. David Shelly did not open the email from Ms. Linda Reidenbaugh. As a matter of fact, it was not until the insured was served with the lawsuit in September that included a cover letter referencing the January 12, 2023, correspondence that Mr. Selly discovered the unopen email.

Based on the facts and timeline above, it is clear Mr. Shelly timely reported this matter to RSUI. Circumstances would be different had Mr. Shelly received a certified letter from the law offices of Saxton & Stump and failed to take appropriate action. We believe the courts will agree with our position. Before taking legal action against RSUI, we provide the opportunity to rescind the current coverage position and reinstate coverage.

Sincerely,

Anthony



## Anthony Viola

*Claim Manager* | Liberty Insurance  
Agency

**P:** 412-571-5714 ext. 212 **F:** 412-571-9909

**A:** Manor Oak Two - Suite #800 1910 Cochran Road  
Pittsburgh PA 15220

**E:** [anthonyviola@libertyins.com](mailto:anthonyviola@libertyins.com)

**W:** [libertyins.com](http://libertyins.com)



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**From:** David Shelly <[dshelly@nurselectstaffing.com](mailto:dshelly@nurselectstaffing.com)>

**Sent:** Wednesday, October 4, 2023 11:54 AM

**To:** Anthony Viola <[anthonyviola@libertyins.com](mailto:anthonyviola@libertyins.com)>; Steve Pcsolar <[stevepcsolar@libertyins.com](mailto:stevepcsolar@libertyins.com)>

**Subject:** [EXTERNAL] FW: Wiggins v. NurSelect, RSUI Claim No. 7030187058

FYI

Sincerely,

David Shelly, President

**NurSelect, LLC**

1829 New Holland Rd., Suite 13

Reading, PA 19607

Main: (800) 484-8572

Direct: (484) 663-4374

Fax (484) 214-0055

[nurselectstaffing.com](http://nurselectstaffing.com)





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**From:** [Briana A. Semenza](#)  
**Sent:** Wednesday, October 4, 2023 10:59 AM  
**To:** [David Shelly](#)  
**Cc:** [Joan M. Gilbride](#); '[zwilson@rsui.com](mailto:zwilson@rsui.com)'  
**Subject:** Wiggins v. NurSelect, RSUI Claim No. 7030187058

Greetings –

Please see the attached letter, sent on behalf of RSUI Indemnity Company.

Regards,  
Briana

Briana A. Semenza | **KAUFMAN BORGEEST & RYAN LLP**  
200 Summit Lake Drive | Valhalla, NY 10595  
direct: 914.449.1011 | fax: 914.449.1100  
[vcard](#) | [email](#) | [website](#)

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# EXHIBIT 14

**RE: Ayanna McDowell**

---

David Shelly

[kas@saxtonstump.com](mailto:kas@saxtonstump.com)

Fri, Oct 14, 2022, 3:09 PM

Hi Kim, here is the last known contact information we have on file for Ayanna. Please let me know if you need anything else. Thank you.

Cell: 267-836-2086

Email: [ayannamcdowell@aol.com](mailto:ayannamcdowell@aol.com)

Address: 2836 Lincoln Hwy, E-2, Ronks, PA 17572

Sincerely,

David Shelly, President

**NurSelect, LLC**

630 Freedom Business Center Dr.

Third Floor

King of Prussia, PA 19406

Main: (800) 484-8572

Direct: (484) 663-4374

Fax (484) 214-0055

[nurselectstaffing.com](http://nurselectstaffing.com)



**NurSelect**  
HealthCare Employment Services



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---

Kimberly A. Selemba



David Shelly

Fri, Oct 14, 2022, 3:14 PM

Thank you, Dave. Can you also please send over the statement that Ayanna prepared?

Thanks again,

Kim

---

David Shelly

Kimberly A. Selemba

Thu, Oct 20, 2022, 12:41 PM

AM Statement[196247].pdf

Hi Kim, please find the requested statement attached. Thanks.

Sincerely,

David Shelly, President

**NurSelect, LLC**

630 Freedom Business Center Dr.

Third Floor

King of Prussia, PA 19406

Main: (800) 484-8572

Direct: (484) 663-4374

Fax (484) 214-0055

[nurselectstaffing.com](http://nurselectstaffing.com)



**NurSelect**  
HealthCare Employment Services



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3 Emails

From: [AYANNA MCDOWELL](#)

Sent: Wednesday, May 12, 2021 4:10 PM

To: [Melissa Reilly](#)

Subject: Statement

I walked in and got report from the aide of her telling me the resident was on the toilet. I went to check her because the other aide was in the resident room assisting her getting dress. So I washed up the resident and set her up to brush her teeth and was going to be right back just was gonna answer his bell and he needed to use the urinal. So when I gave him the urinal I said ring the bell when you're done. As I went over to the aide cause she was still in the resident room. I said we need to get Johanna up when you're done. So when I was bout to go back in Geraldine room the nurse Derrick asked me to go get the resident down the hall up and he was putting his breakfast order in and his sugar was low. So after I did what the nurse asked me to do I walked back to Geraldine room and that's when I seen the aide picking her up and putting her in the chair and I walked in asking what happen she said she rang for help. And then I seen she was bleeding and told the supervisor

Sent from my iPhone

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LANDMARK AMERICAN INSURANCE  
COMPANY,

Plaintiff,

v.

NURSELECT LLC;

Defendant.

Civil Action. No: 5:24-cv-01412

Hon. John M. Gallagher, U.S.D.J.

**Declaration of Zach Wilson**

Zach Wilson declares pursuant to 28 U.S.C. Sec. §1746 as follows:

1. I am employed by RSUI Group, Inc. as Chief Claims Specialist. As a Chief Claims Specialist, I was responsible for administering claims submitted under Professional Liability Policy No. LHC801468 (the “Policy”) issued by Landmark American Insurance Company (“Landmark”) to Nurseselect LLC (“Nurseselect”).

2. I was responsible for administering the claim submitted by Nurseselect in connection with the complaint styled *Brenda L. Kling, individually and as Administratrix of the Estate of Geraldine E. Wiggins, v. Rehabilitation Center at Brethren Village, LLC, Brethren Village, Brethren Village Realty, LLC, Lori Schoener, NHA, and John Does 1-4 v. NurSelect, LLC*, Case No. CI-22-04128, filed on June 13, 2023 in the Court of Common Pleas, Lancaster County Pennsylvania, and submitted for coverage under the Policy (the “Underlying Action”).

3. In my capacity as Chief Claims Specialist for the Underlying Action, I am familiar with the facts, circumstances and proceedings in this Declaration.


4. I make this Declaration based on my personal knowledge in support of Landmark's Motion for Summary Judgment.

5. Annexed hereto as Exhibit "1" is a true and correct copy of the email chain between myself and David Shelly dated September 13, 2023 regarding the claim for the Underlying Action.

Pursuant to 28 U.S. Code § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: Atlanta, Georgia  
January 15, 2025

By:

  
Zach Wilson



# EXHIBIT 1

## Wilson, Zach

**From:** David Shelly <dshelly@nurseselectstaffing.com>  
**Sent:** Wednesday, September 13, 2023 4:10:23 PM  
**To:** Wilson, Zach <zwilson@rsui.com>; Anthony Viola <anthonyviola@libertyins.com>  
**Cc:** Steve Pcsolar <stevepcsolar@libertyins.com>  
**Subject:** Re: Claim # 7030187058 Nurse Select Staffing

Hi Zach,

The email was only discovered after receiving the complaint yesterday - during a search of the employee's name to pull all email correspondences together. The email was previously unread.

Sincerely,

David Shelly, President  
NurSelect, LLC  
1829 New Holland Road  
Suite 13  
Reading, PA 19607  
Tel. (800) 484-8572  
Fax (484) 214-0055  
[www.nurseselectstaffing.com](http://www.nurseselectstaffing.com)



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**From:** Wilson, Zach <zwilson@rsui.com>

**Sent:** Wednesday, September 13, 2023 3:57 PM

**To:** David Shelly <dshelly@nurselectstaffing.com>; Anthony Viola <anthonyviola@libertyins.com>

**Cc:** Steve Pcsolar <stevepcsolar@libertyins.com>

**Subject:** RE: Claim # 7030187058 Nurse Select Staffing

Thank you David.

I see that the mailing address on the 1/12/23 letter is incorrect, but your email address appears correct. Was it sent to your email at that time? Is there a particular reason it was not discovered until yesterday?

Zach Wilson  
Chief Claims Specialist  
Professional Liability Claims  
RSUI Group, Inc.

M: 470-487-6009

[zwilson@rsui.com](mailto:zwilson@rsui.com)

---

**From:** David Shelly <dshelly@nurselectstaffing.com>  
**Sent:** Wednesday, September 13, 2023 1:39 PM  
**To:** Wilson, Zach <zwilson@rsui.com>; Anthony Viola <anthonyviola@libertyins.com>  
**Cc:** Steve Pcsolar <stevepcsolar@libertyins.com>  
**Subject:** Re: Claim # 7030187058 Nurse Select Staffing

Hi Zach,

The complaint was served yesterday, September 12, 2023 around 10:30am. On the back of the complaint there is a date of 8/25/23 that says "writ re-issued" by the prothonotary and a date of 8/28/23 when it was received by the Sheriff Dept. of Lancaster County.

Ayanna McDowell was employed by NurSelect as a W2 employee at the time of the incident. She was terminated from our employment September of 2021 as a result of excessive absenteeism.

Prior communications were as follows:

October 14, 2022 - received a phone call from Kimberly Selemba (Saxton Stump) requesting Ayanna's contact information. (Provided this to her via email)

October 14, 2022 - received email requesting Ayanna's statement regarding the incident (provided this to her via email).

They appear to have had the wrong mailing address for the notice of pending joinder dated Jan. 12, 2023. This was only discovered in my email after we received the official complaint yesterday.

I will send the above mentioned written correspondences in a separate email. Please let me know if you need anything else.

Sincerely,

David Shelly, President  
NurSelect, LLC  
1829 New Holland Road  
Suite 13  
Reading, PA 19607  
Tel. (800) 484-8572  
Fax (484) 214-0055  
[www.nurselectstaffing.com](http://www.nurselectstaffing.com)